Service and Representation for Town Governments of New York State

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PUBLIC HEARING
on the
2021-2022 Executive Budget

Presented to the
Senate Finance Committee
and
Assembly Ways and Means Committee

Presented by

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Greeting and Preliminary Statement

Good afternoon, the Association of Towns (AOT) is pleased to be able to speak on behalf of New York State towns today. My name is Gerry Geist, and I am the Executive Director of the Association of Towns, a statewide membership organization that provides legal and technical training to town officials. I am here to discuss the 2021-2022 Executive Budget and its impacts on town budgets and services. We believe state policy and funding initiatives are best developed through collaborative efforts, and we thank you for seeking out the local government perspective as you carry out this process.

Towns – Providing Essential Services throughout New York

Obviously, 2020 presented challenges unlike any others encountered before, and we cannot be more proud of our members in how they rose to the occasion to continue meeting the needs of 9 million New Yorkers. Throughout the pandemic, towns have continued providing police, fire, and emergency services. COVID-19 did not stop the snow from falling, and our members have been out there plowing and salting roads and fixing potholes, performing code enforcement duties and issuing building permits to keep the wheels of New York's economy going. Towns helped respond to the public health crisis by coordinating with county officials to help implement state directives all while executing more mundane tasks like issuing marriage licenses or collecting tax bills. New York is remarkably diverse. Hempstead, which has approximately 800,000 residents, operates as a dense urban center, whereas Red House, with a population of 34, embodies the rural element of New York, and our members were able to craft solutions and respond to the specific needs of their communities throughout the pandemic. As an organization representing towns both big and small, urban and rural, and elected officials that run the political gamut, AOT is acutely aware that a one-size-fits-all approach simply does not accurately reflect New York's identity. Our positions are crafted with a view toward creating solutions that work statewide for our entire membership and recognizing the important work that towns do.

Funding Initiatives

- **Elimination of AIM for Towns and Reduction in AIM-Related Payments (PPGG Part LL)**

Unquestionably, the area of biggest concern for towns in the Executive Budget is the proposal to reduce AIM-related payments to towns by 20 percent and eliminate AIM for the remaining 8 percent of towns that still belong to that program and shift them over to AIM-related payments. First, while we understand the state is facing a difficult financial year, **the proposed reduction in AIM-related payments will not save the**

state any money because the funding does not come from the state; it comes from county sales tax. The 2019-2020 budget creating AIM-related payments completely upended the state-local partnership that existed through AIM and instead instituted a system where counties are responsible for funding a state program, with the State Comptroller's Office intercepting sales tax that would have gone to the county and distributing it to the vast majority of towns as AIM-related payments. While we understand that this is the program currently in place, we nevertheless want to remind the Legislature of our continuing objection to this paradigm because it is detrimental to county finances, county-town partnerships, and it threatens any existing sales tax sharing agreements between counties and towns. When you make the pot of money available from sales tax smaller, it means there is less sales tax money to share through agreements and makes it more likely that counties will stop sharing sales tax altogether. The state should not impose its responsibility on to counties any more than it already has.

While we continue to object to the AIM-related payment system, we also strongly oppose reducing AIM-related payments by 20 percent. Like so many others, COVID-19 has significantly impacted town budgets and will continue to for years. While we are still evaluating the full effect of COVID-19 on 2020 finances, we do know that expected revenue from fines has gone down due to the closure of justice courts for a period, summer recreation programs were forced to close, and fees from permits and licenses have decreased. Although revenue has gone down, COVID-19 has not diminished the need for the essential services provided by towns in any way. We continue to serve the public by plowing roads, offering police and emergency services, and administering code enforcement, among many other services. Reducing funding of any kind at a time when revenue is down but residents are relying on town services more than ever simply does not make sense. Furthermore, while we understand that counties also face a series of financial challenges, a recent report from the State Comptroller's Office indicates that outside of New York City, county sales tax collection is only down by .09 percent, and in fact, is up in some counties thanks to internet sales tax collection. There are also opportunities available to increase sales tax revenue for counties in different Executive Budget proposals, such as imposing county sales tax on cannabis sales; therefore, we believe that the sales tax revenue is there to meet AIM-related payment obligations.

Finally, we are routinely told that our members don't need AIM-related money and a reduction is not significant because our members do not rely on it. However, when you ask our membership they will tell you, unequivocally, that any amount of money is essential. The fact that AIM and AIM-related payment money makes up a small proportion of a town's budget is a result of flat funding. Towns stand to lose $43,784,917 in this proposal, and that is significant. Based on a survey we sent our members in May 2020, excluding CHIPS, 31 percent of respondents primarily use funding like AIM-related payments for youth, senior and recreation services, so a 20 percent reduction in that funding could have a significant impact on services that support more vulnerable populations. However, youth, senior, and recreation services would not be the only things impacted. We received 39 different responses when asked what town services mainly rely on state funding – services like cemetery maintenance, code enforcement, and police and fire services. Clearly, many services rely on this type of funding, and the breadth of the impact of reductions in funding from programs like AIM-related payments should not be underestimated.

- **Local Roads**

As Governor Cuomo noted in his State of the State address, investing in infrastructure is a great way to invest in the economy in New York. Particularly during a time of so much financial uncertainty, AOT is pleased to see that the PAVE-NY and BridgeNY programs have been renewed at $100 million apiece. However, we believe that in order to meet the tremendous need for road repairs and as a way to help the economy in New York, the Legislature must restore Extreme Winter Recovery and increase the CHIPS base.

For all of its disruptions of day-to-day life, COVID-19 has had no impact on the need to plow roads or repair potholes, and funding for CHIPS has been flat since 2013, meaning that essential repairs have lost out to competing priorities for municipalities, like keeping costs down and staying under the tax cap. Almost every year, the Association of Towns cites the following statistics, but they are worth repeating – that every $1 worth of maintenance on roads and bridges delayed ends up costing an additional $4 to $5 in future repairs. New York drivers lose, on average, $2,768 a year because of poor, unsafe roads and bridges and traffic jams (see *Pavement Maintenance*, by David P. Orr, PE Senior Engineer, Cornell Local Roads Program, March 2006; New York Transportation by the Numbers – Meeting the State's Need for Safe, Smooth and Efficient Mobility, by TRIP, November 2018). Programs like PAVE-NY and BridgeNY were never intended to replace increases to the CHIPS base – and the fact that Extreme Winter Recovery money remains a negotiating point in the budget year after year illustrates the pitfalls of relying on these types of temporary funding programs. Funding for local roads and bridges is a sound investment that will free up tight budget lines for more innovative services, keep people employed during a time of great financial uncertainty, and save tax-paying citizens and workers money; from the Association of Towns' perspective, increasing CHIPS and providing additional money is not only financially justifiable, it is common sense. We strongly encourage the Legislature to fight for the inclusion of the Extreme Winter Recovery Fund and CHIPS funding increases as you adopt the final budget.

- **Cannabis (Revenue Part H)**

The Association of Towns, while not taking a position on the legalization of adult-use recreational cannabis, believes that because legalization will rely on town services, towns should have the ability to opt out of allowing cannabis operations within their jurisdiction, and a portion of revenue from cannabis sales should go to towns in order to reimburse the costs of services incurred by towns. This is not only a matter of home rule, these changes are essential to the success of New York's transition to legalizing recreational cannabis.

Local Option and Input

As the form of government closest to the people – and as an entity whose services will be needed for a successful and robust implementation and follow-through – towns should have a say over whether cannabis operations will be allowed within their jurisdiction. Under the Executive Budget proposal, only counties and cities with populations of over 100,000 would have the ability to opt out. If population is the metric by which the Legislature wants to grant the ability to opt out, the Association of Towns notes that there are several towns in the state with populations exceeding 100,000, and thus, limiting the opt out to cities and counties seems an artificial distinction that disregards the importance of other forms of local governments.

However, regardless of population, towns in New York should have the ability to opt out. Should cannabis become legal, town resources will be used, and town officials are in the best position to determine if the town has the capacity to take on these additional responsibilities and whether the taxpayers they represent would support diverting town resources toward cannabis operations.

For example, some towns provide police services, others contract with the county sheriff for an added level of service, whereas others still have determined that the base level of protection offered by the county sheriff's department is sufficient. Cannabis operations in town could require an increase in police service with additional hires, overtime and/or amendments to existing contracts for more services or new contracts with the county sheriff. All of that would be funded out of the town budget (and thus by town taxpayers), yet the Executive Budget renders the voice of towns and their residents silent by failing to provide towns with the opportunity to opt out.

Alternatively, a county may decide to opt out, thereby leaving those communities who welcome cannabis operations with no recourse, which is equally unacceptable. Municipalities within the same county are diverse and have different needs and wants, even with respect to cannabis. A January 2020 voter survey conducted by Siena College indicated that voters statewide supported legalizing cannabis 58 percent to 38 percent; however, when breaking down demographics further, a slight majority of suburban voters actually oppose legalization, with 44 percent in support and 48 percent opposed (see Nick Reisman, *Voters Back Marijuana Legalization, but Suburbs Remain Split,* Spectrum News State of Politics, originally published Jan. 21, 2020, available at https://nystateofpolitics.com/state-of-politics/new-york/ny-state-of-politics/2020/01/21/voters-back-marijuana-legalization--but-suburbs-remain-split). If the state is motivated to move forward with legalized cannabis, it would do well to consider the varying needs and wants of New York's extremely diverse municipalities and that taking a one-size-fits-all approach on a countywide basis fails to provide the flexibility necessary for this program to be successful.

Sales Revenue Distribution

To account for the fact that town resources are instrumental to successfully implement legalized cannabis in New York State, a portion of sales tax revenue should be provided to those towns that allow cannabis operations within their jurisdiction. The Executive Budget proposal directly acknowledges the public safety element to legalized cannabis and vests the cannabis control board with authority to create rules and regulations to prevent cannabis activity from being a cover for trafficking illegal drugs, drugged driving and other adverse public health and safety concerns legalized cannabis could bring. The proposed legislation emphasizes public safety and expressly says that it is the policy of the state to properly protect the public health, safety and welfare of the community. Executing this policy means not only funding social justice programs, substance abuse treatment, prevention and education, but also funding police services, fire protection, code enforcement and ambulance services. This means directing a portion of cannabis sales tax revenue to the ones who provide these services – towns. In the states that have legalized recreational cannabis sales, 70 percent share some portion of retail sales revenue with town-level local governments. The best way for the state to protect the health, safety and welfare of the community, will be to have funding dedicated specifically to towns.

- **Eliminating Video Lottery Terminal Aid (VLT) (PPGG Part KK)**

We oppose the proposal to eliminate VLT aid to all local governments except the City of Yonkers. The state provides VLT aid to municipalities that host VLT facilities, 17 of which are towns. The loss of any aid to towns has a significant impact as they try to operate under a tax cap, keep real property taxes down, and navigate the fiscal impacts of COVID-19.

- **Vacation rental sales tax and mobile sports betting (Revenue Parts I and Y)**

The executive budget contains proposals that will introduce new sources of revenue to New York. Specifically, Part I of the Revenue Bill requires rental marketplace providers (such as Airbnb and VRBO) to collect sales tax on the vacation rentals they facilitate, while Part Y of the Revenue Bill authorizes mobile sports betting in New York. The fees generated from these two proposals present a unique opportunity for the state to financially assist local governments at no cost to the state. As the proposals currently do not divert any funds to local governments, it is imperative to modify the legislation to recognize the important work municipalities do by including them in the revenue stream.

Municipal Home Rule

- **Renewable Energy Real Property Tax Exemption (Revenue Part X)**

Under this proposal, taxing jurisdictions retain the authority to provide a real property tax exemption on certain energy systems and require a PILOT agreement or opt out of the exemption entirely. We strongly support this provision of the bill, as it respects home rule authority and allows taxing jurisdictions to determine the proper taxation avenue for their locality. However, this bill has several problematic provisions that severely hamper home rule, and accordingly, must be modified. Specifically, this legislation adds a new section to the law that requires assessors to value solar or wind energy systems using an income capitalization or discounted cash flow approach, using figures set forth by the state. Assessors in New York have a statutory duty to value all real property in New York within their jurisdiction, including solar and wind energy systems. The renewable energy goals of the state can be met without hindering the ability of assessors to conduct their work in the manner that their training and expertise requires. The state should consult local assessors in the event that the state requires a statutory formula to determine the value of this equipment – this is a fundamental component of home rule. Accordingly, we cannot support this portion of the bill and request that it be modified to allow assessors to retain their statutory authority, or at minimum, that the state form a working partnership with assessors to determine the best method of assessment moving forward.

Unfunded Mandates

- **Moratorium on Termination of Utility Services (TED Part OO)**

This proposal expands on the law adopted in June 2020 that placed a moratorium on utility termination of services during a pandemic or state of emergency by including certain commercial properties within the moratorium and expanding the law to include any state, national or global state of emergency.

As the law currently reads, towns and other utility operators are prohibited from terminating services due to non-payment of an overdue charge during the COVID-19 State of Emergency. Additionally, a utility provider is prohibited from terminating utility service for a period of 180 days following the COVID-19 State of Emergency if the customer can demonstrate a change in financial circumstances due to the COVID-19 State of Emergency.

Under this proposal, a utility provider (including towns) is <u>indefinitely</u> prohibited from terminating utility services, even after the state of emergency has expired, so long as a customer can demonstrate a change in financial circumstances as determined by the state. This unlimited expansion is particularly troubling, as utilities are a tangible good that cost towns money and resources to provide to their residents. As you are aware, local governments are under significant fiscal stress and simply cannot afford to underwrite the utility costs of properties impacted by a state disaster emergency in perpetuity without financial assistance from the state. For those reasons, we cannot support the amendments to this law as written, and instead request that the state appropriate the requisite funds to local government utilities so that their residents may continue to receive services.

Proposals AOT Supports

- **Interest Rates on Judgments (PPGG Part AA)**

We strongly support the Executive Budget proposal to use the one-year U.S. Treasury Bill Rate to calculate the annual interest rate paid on judgments or accrued claims. The current framework provides that judgments and claims interest accrue at 9 percent. Not only does that rate far exceed what one would earn investing, it drives up litigation costs for municipal defendants and penalizes them for delays that may be beyond their control. While we can see that this legislation was necessary when interest rates were in excess of 9 percent, this protection is no longer necessary in today's economic climate. Tying interest rates to the one-year U.S. Treasury Bill Rate is on par with federal courts and appropriately reflects interest rates for today's markets. Accordingly, adopting this proposal is a matter of equity that would reduce costs for local governments.

- **Expanding Funding for Countywide Shared Services Plans (PPGG Part NN)**

AOT supports the proposal that gives municipalities more flexibility to apply for matching savings grants. Under proposed amendments, projects in previously approved plans would be eligible for state matching funds when they are implemented; currently, initiatives must be implemented in the year after the plan is approved in order to be eligible. 2020 was not a year anyone envisioned, and as a result, many projects that were included in the CWSSI plans had to be delayed or were not able to be implemented. Even under the best of circumstances, sometimes projects get delayed, and making sure these projects could still receive grants when they are implemented makes it all the more likely that the project will be completed, which is the ultimate goal.

- **Extends "Piggybacking" for local governments (PPGG Part OO)**

AOT supports extending the authority to piggyback off of other competitively bid governmental contracts until July 31, 2023 as proposed in the Executive Budget. Piggybacking helps municipalities avoid the time and expense of going out to competitively bid themselves while still ensuring that cost of the product or services is fair and competitive.

Conclusion

Thank you for the opportunity to appear before you today to share with you our perspective on the proposed Executive Budget and its impact on town services and operations. We look forward to working with you during this budget and legislative session.