# Association of Towns of the State of New York (AOT)

***Service and Representation for Town Governments of New York***

January 26, 2016

PUBLIC HEARING
on
2016-2017 Executive Budget

Presented to
Senate Finance Committee
and
Assembly Ways and Means Committee

Hearing Room B, Legislative Office Building

**Presented by**

**Gerry Geist, Executive Director**
**Andrea Nilon, Assessor Town of Hamptonburgh, Orange County**
**Bill Moehle, Supervisor Town of Brighton, Monroe County**

**150 STATE STREET ALBANY, NEW YORK 12207 * P: (518) 465-7933 * F: (518) 465-0724**
**WEBSITE: WWW.NYTOWNS.ORG**

## Greeting and Preliminary Statement

Good Afternoon, it is a pleasure to be with you today. My name is Gerry Geist, Executive Director of the Association of Towns and former town board member in the Town of North Castle in Westchester County. Thank you for the opportunity to appear today on behalf of the Association of Towns to discuss the Executive Budget's impacts on town budgets and services. With me today are Andrea Nilon, Assessor for the Town of Hamptonburgh, Orange County and the current President of the Association of Towns, and Bill Moehle, Supervisor for the Town of Brighton, Monroe County and a member of the Association of Towns' Executive Committee.

A little background on our organization and who we serve: the Association of Towns was formed in 1933 by town officials to help towns obtain greater economy and efficiency. Towns are located in every county except those counties contained within the footprint of New York City, with about 46 percent of the state's population calling a town their home. Our Association serves town governments by providing training programs, legal research and information services, technical assistance, insurance programs and advocacy.

### Appreciation for Past Accomplishments

First, we want to extend our gratitude for your initiatives in last year's session that benefitted town residents; namely, the passage of Chapter 372, which allows towns to tailor the number of boards of registration needed for special town elections. We estimate that this could save town taxpayers tens of thousands of dollars while encouraging more voter participation in special town elections. This is a perfect example of state and local officials working together to make town government more efficient. We also want to thank you for working with us regarding issues pertaining to the manner in which PILOTs are treated under the tax cap. We are hopeful that we can work together again to extend the capital projects exemption to town governments.

### Summary of Comments

Today, we will focus on ways the state budget can help lower property taxes, protect the public health and grow our economy.

## General Purpose Revenue Sharing (AIM)

The Executive Budget does not propose any increases to general revenue sharing through the Aid and Incentives for Municipalities (AIM) program. When factoring in inflation, six years of flat AIM funding actually results in a reduction. Municipalities will again share $714.7 million dollars in AIM funding: Towns will share $47.9 million or 6.7 percent of the total; villages will share $19.7 million (2.5 percent of the total); and cities will share $647.1 million, or 90.5 percent of the total. Unrestricted state aid to towns has effectively been reduced by 9.74 percent due to flat funding against rising inflation. Starting in 2010, the year the current flat funding paradigm came into effect, adjusting the amount of AIM given to towns for inflation would have meant an additional $30 million. Despite authority for 2 percent annual spending increase, the state has kept AIM levels flat. Although the governor demonstrated a clear desire to reduce the burden on property taxpayers through the tax cap and tax freeze programs, the Executive Budget again underutilizes a revenue sharing program already in place to reduce local reliance on property taxes to fund local services.

As a class, towns are financially healthy, although individual towns struggle financially. Town taxpayers would greatly benefit from an increase in AIM funding. Comptroller DiNapoli recently noted that small towns are greatly impacted by relatively small changes in revenues or expenditures from year to year, which can cause them to run operating deficits or experience a decline in fund balances (*Three Years of the Fiscal Stress Monitoring System Results for Municipalities with Fiscal Years Ending on December 31, 2014*, Office of the State Comptroller, September 2015). More towns will continue to experience declines in fund balances, thereby increasing the cost of local borrowing, deteriorating infrastructure and diminished services due to flat general purpose aid and tax cap limitations. The state can help address these issues by increasing state aid and exempting capital expenditures from the tax cap.

## Consolidation Incentives

The Executive Budget continues funding for the Citizens Reorganization Empowerment Grants and the Citizen Empowerment Tax Credit programs. These programs provide funding through a competitive grant program that encourages government reorganization, consolidation and dissolution. These programs will share $35 million in funding. An additional $4 million will fund the Local

Government Efficiency program, which is a competitive grant program that funds shared services, consolidation and regional initiatives. The Executive Budget also includes $20 million in funding from the settlement funds for a new one-time competitive grant that will be awarded to municipalities that create permanent property tax relief through a regional or consolidated proposal, the details of which are not included in the budget. Town officials have been sharing services for generations, with 65 percent of towns submitting tax freeze efficiency plans in 2015. Funding for shared services helps to defray the expenses associated with studying and implementing initiatives set forth in these plans. While local governments benefit from these programs, it is important to note that shared services and local government consolidation alone will not lead to sustainable property tax relief. If your goal is to lower property taxes in a meaningful and lasting way, more funding needs to be allocated through general purpose revenue sharing and infrastructure funding.

**Local Roads and Bridges**

Parity between MTA and DOT Five-Year Capital Plans

Local governments own and maintain nearly 100,000 centerline miles (towns are responsible for approximately 60,000 of these centerline miles) and more than 8,600 highway bridges. More than 67 billion vehicle miles are traveled annually on local roads, a figure that is increasing at a rate of almost 2.5 percent per year. Locally owned infrastructure has surpassed state-owned infrastructure, accounting for more than 87 percent of New York's roads, 52 percent of New York's bridges and 48 percent of vehicle mileage logged in New York State. Towns are required to annually plan road projects (Highway Law, §284) and are encouraged to engage in multi-year plans. One of the essential components of DOT's five-year capital plan is the department's local infrastructure needs assessment and funding recommendations. We are pleased that the Executive Budget provides funding for a five-year capital plan for the Department of Transportation (DOT), which will help towns properly plan and budget for critical infrastructure repairs. While we are pleased at the prospect of a new five-year capital plan, we believe it is critical that New York honor its long-standing tradition of parity in spending between the Metropolitan Transportation Authority's (MTA) capital plan and the DOT's capital plan. According to the Associated General Contractors of New York State's recent budget testimony, there is a $6 billion disparity between the DOT capital plan ($20.1 billion) and the MTA capital plan of ($26.1 billion). ***All*** New Yorkers depend on reliable transportation systems and deserve safe roads, bridges and mass transit systems. We encourage you to examine the funding disparities between these plans and address them accordingly.

Exclude Capital Expenditures from the Tax Cap Calculations

Towns are finding it increasingly difficult to scrape together the funds needed to properly maintain and upgrade local roads and bridges. The struggle between raising the funds for the maintenance of local roads and bridges (which comes from property taxes) and staying below the annual property tax cap is a constant reality for town officials. The state comptroller recently reported that the allowable levy limit for schools and municipalities with fiscal years starting in June 2016 will be 0.12 percent. While the 2017 tax cap for towns is currently unknown, we reasonably expect that it will be similar. The limitations placed upon a town's ability to raise sufficient local revenues to properly maintain local infrastructure would be alleviated by additional state funding. For even more breathing room, the Legislature could exclude capital project costs from the annual tax levy limit. The exclusion for capital projects for school districts has helped districts better manage their infrastructure costs without the uncertainty associated with a tax cap override. Local governments could similarly be benefitted by a capital projects exclusion.

Increase CHIPS and Marchiselli Aid

Town taxpayers are on the hook for 75 percent of the cost of maintaining, repairing and improving local roads and bridges, with the state and federal governments combining to fund the remaining 25 percent. In 2013, the State Comptroller's Office reported that we need to spend $2.3 billion annually to properly fund local roads and bridges (*Growing Cracks in the Foundation: Local Governments Still Challenged to Keep Up with Vital Infrastructure Needs*, Office of the State Comptroller (2014)).

Unfortunately, state funding for local roads and bridges has remained flat since 2009. The Executive Budget again proposes no increases for CHIPS ($438.1 million) and Marchiselli aid ($39.7 million), nor does it fund the additional winter maintenance aid that was included in the last two budgets that helped to repair potholes and other side effects of New York's winter weather. Had CHIPS kept pace with inflation since 2009, we'd be looking at 2016-17 funding that would be $46.5 million greater. We encourage you to examine the success of the CHIPS and Marchiselli funding programs and to increase funding for these programs. They are proven programs that are appreciated, predictable and well used by local governments to help maintain local roads and bridges.

New Funding Programs

There are three new funding programs for local roads and bridges included in the Executive Budget: Pave NY ($500 million over five years); Bridge NY ($500 million over five years); and the Extreme Weather Infrastructure Hardening Program ($500 million over five years), all of which appear to be funded through the DOT five-year capital plan. According to Commissioner Driscoll's recent budget testimony, DOT is currently working on the program requirements that are needed to distribute these funds. In the absence of a defined criteria that we can review, we recommend considering using the CHIPS formula to distribute these funds. It is a time-tested and proven formula that equitably distributes funds to local governments. In addition, Commissioner Driscoll noted that the Bridge NY funds would be distributed on a competitive basis. While we appreciate the benefits of a competition in that all participants will have a project plan that they can utilize for capital planning purposes, we are concerned that critical bridge repairs will go unfunded through such a process, with some municipalities feeling undue pressure to use local funds to employ grant writers to land the grant. The CHIPS funding program works well and will better ensure that all needed bridge repairs will receive consideration and funding. While we support the additional funds included in the Executive Budget and encourage the Legislature to fully fund these new programs; it is still far short of the funds needed to address the deterioration of our local roads and bridges. All New Yorkers will benefit from safe roads and bridges. Investing today will save money tomorrow because replacing roads and bridges can cost twice as much as it does to maintain them (NYSDOT 2008 Pavement Report).

**Water and Sewer Funding**

After several years of calling for a dedicated program to fund drinking water systems, last year, the state created the Water Quality Infrastructure Improvement Act of 2015 (Act), which is a new program that addresses our aging drinking water infrastructure. Thank you for taking the initiative to create a new dedicated funding program! Over a three-year period, the Environmental Facilities Corporation will disperse $200 million for municipal water and sewer infrastructure improvements. We are concerned that the proposed $100 million increase in this year's budget falls far short of the demonstrated need. In 2015, the American Society of Civil Engineers' New York State Council (council) gave our drinking water systems a letter grade of C and our wastewater systems a D. Due to a lack of funds, the council noted that an astounding 95 percent of drinking water projects submitted go unfunded. The Department of Health estimates that New York must spend a ***minimum*** of $38 billion on drinking water infrastructure over the next 20 years to protect the public health. The council also reported that one in four wastewater treatment facilities are currently operating beyond their 30-year life expectancy. Moreover, the council reports that 22,000 miles of underground sewer systems are more than 60 years old and operating well beyond their intended use. The Department of Environmental Conservation has reported that it would cost $36.2 billion over 20 years to repair, replace and update New York's aging wastewater infrastructure. Addressing these issues today will result in savings to the taxpayer, protect the public health and grow our economy.

Failing water and sewer infrastructure can lead to ruptured water mains and sewer lines. When water mains burst, residents, children and businesses are impacted in any number of ways. Just last week, a 100-year-old steel water main ruptured in the city of Troy. Not only were people impacted in the city; schools, residents and businesses in several surrounding municipalities were also impacted because neighboring towns and school districts purchase water from the City of Troy. Businesses closed, children missed school, and local taxpayers now have to fund overtime, bottled water and added costs associated with emergency situations. Unfortunately, what happened in Troy is not unusual and will likely happen more often as our infrastructure continues to age.

The NYSEFC has skillfully leveraged state and federal funding to provide billions in funding for local water and sewer projects over the years, and yet, there remains a huge need for financial assistance to upgrade outdated municipal water and sewer systems. Local ratepayers simply cannot meet the financial need without state funding assistance. Allocating more of the financial settlement funds to ensure access to safe drinking water will not only protect the public health but it will encourage and enable businesses to stay and grow in – or relocate to – New York and put people to work with good-paying jobs to rebuild our aging water and sewer systems (2015 Infrastructure Report Card for New York State American Society of Civil Engineers' New York State Council).

**Environmental Protection Fund**

We encourage the Legislature to support the increased funding for environmental projects set forth in the Executive Budget. The Environmental Protection Fund Expansion Act amended Tax Law §1421, directing the state to increase funds available to the Environmental Protection Fund (EPF) from the

Real Estate Transfer Tax (RETT). The goal of this legislation was to provide at least $300 million annually, beginning with state FY 2009-10. Unfortunately, due to the recession and prolonged strained fiscal climate, the state was unable to honor this statutory commitment. For the first time since the adoption of the Environmental Protection Fund Expansion Act in 2007, the Executive Budget includes $300 million in funding for the EPF; $120 million derived from settlement funds. We applaud the use of $120 million from the settlement funds to achieve the state's goal of providing $300 million in EPF funding. We encourage the state to continue providing robust funding for the EPF.

**Design-Build and Best-Value Public Works Contracts**

The Association of Towns supports extending design-build and best-value contracting to local governments for public works projects. The Executive Budget includes authorization for some state entities to utilize design-build and best-value contracting as part of the proposed Transformational Economic Development Infrastructure and Revitalization Projects Act (act) (TED, Part H S6408/A9008). Pursuant to the act, the New York State Urban Development Corporation, New York Convention Center Development Corporation and their subsidiaries will be authorized to use design-build and best-value contracting for construction projects related to the Jacob V. Javits Convention Center, the Empire State Station Complex, the James A. Farley Building Replacement and the Pennsylvania Station New York Redevelopment. The accompanying memorandum indicates that the taxpayers will save both time and money by authorizing the use of design build and best value contracting for these projects. According to Crain's New York Business, the state has calculated that design-build projects are 27 percent less costly (The Insider "Saving money with design-build" Crain's New York Business July 20, 2014).

Last year, the Executive Budget proposed extending design-build to counties, towns, cities and villages with populations of more than 50,000 to utilize for public infrastructure projects. One way to capitalize on the infrastructure funding set forth in the budget would be to reduce the cost of public works. Extending design-build and best-value contracting to public works projects sponsored by local governments is a simple way to stretch infrastructure funding.

## Justice Court Funding

Town justice courts are primarily locally funded. General Municipal Law §99-L provides for the payment of specified fees to towns and villages for certain services performed by their respective town and village justice courts. Most of the fees relate to services performed for another municipality or governmental entity – principally the state and county. The current reimbursement rate of $15 for vehicle and traffic offenses was set in 1997. Although inflation alone necessitates an increase in fees for operational expenses, towns are especially in need of an increase in these fees since many towns have incurred additional prosecutorial expenses since the state police stopped negotiating traffic tickets.

## STAR Administration Reimbursement

The STAR program, enacted in 1997 to provide a school property tax exemption to owner-occupied properties, is a state program that is administered at the local level by our towns; many town assessors devote 30 percent of their time to STAR administration, with some even requiring additional staff to assist in administering the program. When STAR was initially implemented, the state recognized the burden placed on towns and provided aid to local governments to defray the administrative costs; in 2004, this amount was reduced from $12 million to $6 million and was eliminated altogether in the 2009-2010 fiscal year, despite the fact that administration of the program has become more complex and burdensome with each program enhancement.

Part A of the Revenue Article VII Bill of the 2016-2017 Executive Budget converts the STAR benefit from a real property tax exemption to a personal income tax credit program, applicable to any property purchased or transferred after the 2016 taxable status date. The personal income tax credit program is administered by the Department of Taxation and Finance. The Association of Towns appreciates the attempt to reduce the administrative burden faced by local governments. While this proposal shifts the administrative processing to the Department of Taxation and Finance, it will take decades before the full transition occurs. Until then, local governments will continue to expend significant time and resources administering this state program. One way to address this burden today would be to reinstate the original service fee until such takeover is complete.

**Retroactive Nonprofit Exemptions**

New York's real property tax burden is among the highest in the country. A major contributing factor to high property taxes is the number of exempt properties in the state, the value of which is simply astounding. In 2012, the full market value of all real property in New York State totaled $2.5 trillion (see Office of the New York State Comptroller, Division of Local Government and School Accountability, Research Brief: Property Tax Exemptions in New York State at 1). Approximately $826 billion was exempt from real property taxes, and 27 percent of the full market value was exempt from one or more types of local government and school district taxes (see id.). Consequently, the property taxes that would otherwise be funded by these tax exempt entities are shifted to farmers, businesses and homeowners, who do not enjoy a property tax exemption.

Meanwhile, the Legislature continues to authorize new exemptions. The number of real property tax exemptions in New York grew to 4.6 million in 2012 (see id. at 3). Real Property Tax Law §420-a exemptions for the moral and mental health of men, women and children have increased by more than 300 percent since 1982, while educational nonprofit organizations receiving exemptions increased by more than 150 percent (see *Evaluating the Needs for and Costs of New York State Property Tax Exemptions*, 2009 Report of NY Senate Select Comm. on Budget and Tax Reform at 4). This is despite a 1993 panel finding that "exemptions are now a significant source of fiscal stress for (local) taxing units' in New York" (see *Interim Report*, December 1993 Report of Governor's Panel on Real Property Tax Exemption and Classification Issues at 4, quoting John K. Mullen, *Property Tax Exemptions and Local Fiscal Stress*, National Tax Journal, December 1990). In fact, the overextending of property tax exemptions for such properties was addressed way back in 1975, when a state commission found that the courts were extending the benefit to properties associated with private entrepreneurial activity, serving to further erode the property tax base (see id. at 29, quoting *The Real Property Tax*, 1975 Report of the Temporary State Commission on State and Local Finances, Vol. 2 at 126). Even though the systemic erosion of the tax base has been an issue for more than 40 years, the number of exemptions continues to rise.

As a direct result, local governments are forced to shift the tax burden of hundreds of billions of dollars in equalized value onto non-exempt taxpayers (see *Evaluating the Needs for and Costs of New York State Property Tax Exemptions*, 2009 Report of NY Senate Select Comm. on Budget and Tax

Reform at 2). There are municipalities with as much as 88 percent of their tax base exempt from taxation (Dept. Tax & Finance, Exemptions from Real Property Taxation in New York State: 2010 County, City and Town Assessment Rolls) this means that the remaining 12 percent of taxpayers are required to assume 100 percent of the tax burden. These numbers are staggering and simply unsustainable.

Assembly Bill 6011 / Senate Bill 605 is an example of well-intentioned legislation that will further erode the local tax base. This legislation seeks to amend Real Property Tax Law §§ 420-a and 420-b to allow, by local option, eligible nonprofit organizations to receive retroactive exemptions when they have purchased real property after the taxable status date. While this legislation will provide relief to nonprofits, it will undoubtedly shift the property tax burden to nonexempt owners. The taxable status date exists to provide taxing jurisdictions with a uniform date upon which to base an assessment. The taxable status date currently functions so that while the value of properties may change due to events occurring after the taxable status date, the assessed value of the property is not impacted for that tax year. A uniform taxable status date provides stability and certainty in the real property tax cycle, which is necessary so that local governments can develop their budgets based upon the assessment roll. The taxable status date cannot and should not be construed to encompass a shifting period of time; to do so would create instability, uncertainty and unfairness in the real property tax structure.

Shifting the taxable status date from a date certain to any date in time will serve to further erode the tax base from which local governments can derive revenue to provide essential services to residents, continuing the disproportionate shift of the tax burden to nonexempt owners and presenting substantial fiscal problems for local taxing units. In addition to extending the disparity between exempt and nonexempt owners, eliminating the taxable status date for certain owners removes the guarantee that all property owners within the taxing jurisdiction will be treated equally, as it grants certain owners preferential treatment to the detriment of nonexempt owners. While this bill is available by local option only, the fact remains that it will become a political necessity forced upon town officials.

Each property tax relief bill has merit and will provide targeted relief to some, but the cumulative effect of the myriad ad hoc exemptions has resulted in high property taxes for homeowners, businesses and farmers throughout the state. The Association of Towns appreciates the Legislature's efforts to study this issue and introduction of legislation to address some of the inequities in the current property tax system. We look forward to working on these issues with you this session.

**Closing**

Today’s fiscal realities demand a proactive response from government leaders. We need to work together to find solutions to foster our collective prosperity. We look forward to a productive legislative session. Thank you for your time and consideration.