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New York State Conference of Mayors and Municipal Officials

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The 2017-18 Executive Budget

Testimony of the New York State Conference of Mayors

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Before the
Joint Fiscal Committees' Hearing on the Executive Budget

Senate Finance Committee
Hon. Catharine Young, Chair

Assembly Ways and Means Committee
Hon. Herman D. Farrell, Jr., Chair

January 30, 2017
Albany, New York

Thank you for affording NYCOM the opportunity to express the views of our 580 member cities and villages regarding the 2017-18 Executive Budget. I am Peter Baynes, Executive Director of the New York State Conference of Mayors and I am joined by NYCOM President and Mayor of the City of White Plains, Thomas Roach.

While there are a number of issues and proposals I would like to address in this testimony, I would be remiss if I didn't start by saying that NYCOM's member cities and villages continue to feel demonized by the unjustified attacks by the current Administration, as the Governor portrays local officials as the scapegoat for all that is bad in New York State, especially when it comes to high property taxes. The Governor continues to harp on the apparent waste and duplication at the local level – a premise that is clearly disproven by the facts, including data collected annually by the State Comptroller on city and village spending and tax levies. Ironically, this data clearly shows that, in fact, the fiscal restraint of New York's 1,599 local government entities (not 10,500!) exceeds that of State government.

The State continues to comply with a self-imposed 2% cap on spending but, importantly, the State's cap excludes capital expenditures. Meanwhile, spending increases by city governments (including their capital expenditures) have averaged 1.8% each year since 2010. City efforts to control real property tax growth are even more impressive, with the growth in their tax levies averaging only 1.3% from 2016 to 2017.

At the heart of municipal government fiscal discipline is their longstanding practice of sharing services with their neighboring local governments. Anyone who has worked in or around local government – like many of you on the Legislature's fiscal committees have – will confidently confirm that sharing of services is a fundamental aspect of administering essential local services. In 2014, NYCOM surveyed our city and village members to document the degree to which local officials have eliminated duplication and maximized efficiency. The 225 survey responses documented 1,600 examples of shared service arrangements between two or more municipal governments, an average

of 7 separate shared services for each city or village. To declare or even suggest that local officials don't and won't work together flies in the face of reality.

Consequently, it should come as no surprise that NYCOM is vigorously opposed to the Governor's latest proposal attempting to force municipal governments to consolidate their services in ways they already are, and even more strongly opposed to him linking its passage to AIM funding. The proposed mandate would require each county outside of New York City to prepare a plan for "shared, coordinated and efficient services" among the units of local governments contained within the county, excluding school districts – which would be prepared by the county's chief executive officer and then be put to a mandatory countywide referendum. Ignoring school taxes and imposing a new state mandate is no way to tackle New York's property tax problem. The last thing New York's real property taxpayers need is another directive from Albany, particularly one that that would circumvent local representative democracy via a county-determined, all-or-nothing referendum. This is an unworkable, ineffective and clearly diversionary proposal that allows the Governor to point fingers as opposed to partnering with local governments to find real solutions to New York's property tax problem.

Interestingly, the examples of shared services that are listed in the Governor's proposed consolidation mandate are some of the most prevalent cooperative arrangements already in existence in every corner of this State. Sharing of highway equipment, storage facilities and/or plowing services was an extremely common response to NYCOM's survey of city and village shared service practices. The Governor also wants local leaders to purchase goods and services cooperatively, but they already do. The vast majority of local governments purchase off of OGS or county contracts, and many also participate in regional or even national government purchasing cooperatives. Municipal insurance is highlighted in the Governor's bill as an area ripe for sharing of services, yet approximately 80% of municipal governments in New York secure their workers' compensation insurance through cooperatives, 55% purchase their property/liability insurance through the New York Municipal Insurance Reciprocal cooperative, and many also participate in county, regional or State (i.e., the Empire Plan) health insurance programs.

Where certain services are not being shared as frequently, there are good reasons, such as an arrangement may not actually result in savings – since not all shared services do – or because there are contractual, legal, and/or regulatory barriers standing in the way. A mandated countywide referendum is not the answer. Perhaps a more effective and productive alternative would be to address some of those barriers and incentivize and reward local governments to continue to find new and innovative ways to work together.

Even by taking this approach, meaningful property tax relief doesn't stand a chance unless we address the true causes of high property taxes – cuts in unrestricted aid and unfunded mandates. New York's revenue sharing program, when adequately funded, is a proven means of moderating the growth in municipal property taxes. Unfortunately, the last increase in AIM came in SFY 2008-09 and since then AIM funding to cities (outside NYC), villages and towns has decreased by 16% in real dollars. New York City's AIM allocation – totaling \$328 million – was completely eliminated in SFY 2010-11. Currently, school aid – which totals nearly \$25 billion – is nearly 35 times the total AIM program and the entire AIM appropriation of \$715 million is 65% less than the proposed increase in school aid. We are not saying that the schools are not deserving of this amount – but the success of our schools is directly related to the success of our communities. Just as annual increases in school aid help school districts comply with the tax cap and maintain essential services, municipal governments need and deserve similar annual increases in State aid. In that vein, we are asking that the State Legislature restore the cuts in AIM that have been made since 2008-09 adjusted for inflation. This would result in an increase of \$134 million and would mirror what the Legislature and Governor did for school districts last year with the full restoration of GEA cuts.

Infrastructure Funding

While the primary role of a local government is to provide vital services to its residents, cities and villages, in doing so, must also maintain critical public infrastructure including water and sewer systems. NYCOM greatly appreciates the \$400 million that has been dedicated to the Water Infrastructure Improvement Act, of

which the remaining \$175 million will be allocated in the upcoming state fiscal year. However, we know that the need for infrastructure funding far exceeds what is currently available. Consequently, NYCOM strongly supports the Executive Budget's five-year, \$2 billion Clean Water Infrastructure Act, although the details on how that money will be allocated are unknown at this time. This level of funding certainly has the potential to go a long way toward helping local governments address their critical infrastructure needs while also ensuring their residents have clean and safe water to drink. NYCOM does however have some concerns about the new requirements for water testing included in the Health and Mental Hygiene Article VII bill (S.2007/A.3007) as well as the provisions for the cleanup and abatement of solid waste sites and drinking water contamination that are included in Part II of the Transportation and Economic Development Article VII bill (S.2008/A. 3008).

With respect to water testing, language in the Budget would require public water systems serving fewer than 10,000 customers to test for the presence of emerging contaminants in drinking water once every three years in accordance with a schedule to be determined by the Department of Health (DOH). The Executive Budget also provides funding to offset such costs but only for those entities that are experiencing financial hardship. While we certainly understand the importance of water testing, we do not think the cost should be borne by local governments. School districts will receive building aid to offset a portion of the expenses they each incur for water testing. We believe similar arrangements should be made for local governments.

Pursuant to the language proposed with respect to the cleanup and abatement of solid waste sites and drinking water contamination, the Department of Environmental Conservation would have fairly broad authority with respect to determining the measures deemed necessary for both mitigation and clean-up, in addition to deciding what level of remediation needs to be achieved. Given this, even though municipalities would be responsible for less than the total expenses associated with the remediation program, their share could still be extremely costly. In addition, we would request that the language include a carve-out for municipalities that involuntarily acquire waste facilities and sites, similar to what is provided for at the federal level. We encourage the Legislature to look carefully at this language to ensure that its laudable intent is not undermined by unintended consequences for local governments.

Transportation Funding

While local governments will clearly benefit from the PAVE NY and BRIDGE NY programs created last year, and which are proposed in the Governor's Executive Budget to be continued in 2017-18, local infrastructure needs continue to far outpace the amount of resources currently available. The repair and maintenance of roads and bridges has suffered at the expense of the many other demands on municipal budgets. A 2013 study cited by the Office of the State Comptroller estimates that the funding needs for local roads and bridges total \$34.8 billion through the 15-year period ending in 2030. According to the same report, in 2012, 48% of local roads were estimated to be in poor to fair condition. Furthermore, in 2012, the Department of Transportation rated more than one-third of local bridges as deficient.

It has been estimated that every \$1 of deferred maintenance on roads and bridges costs an additional \$4 to \$5 in needed future repairs. While there have been sporadic increases in the CHIPS program over the past decade, locally-owned roads remain in need of substantial near-term improvements. Therefore, it is essential that local governments receive more bonded or pay-as-you-go transportation funding to allow them to maintain aging infrastructure, as well as invest in new development. NYCOM is requesting an increase in CHIPS funding to help achieve these goals.

In addition to CHIPS, there are currently 38 cities that have arterial maintenance agreements with the State. Pursuant to these agreements, the cities maintain certain designated State-owned arterial highways and the State compensates those cities for this service. The reimbursement rate of \$.85 per square yard paid to cities for maintenance of state arterial highways has not been increased since 1987. A proposed inflationary adjustment in 2016 (A.10585 (Rozic)/S.7896 (Golden)) to \$1.77 per square yard would provide a much-needed inflationary increase for the 38 cities participating in this state-local shared services program, and would represent an additional State expenditure of approximately \$11.8 million. If the State had to maintain these highways, the State's fiscal exposure would far exceed the reimbursements that would be paid to cities under this proposal.

Finally, NYCOM urges the State Legislature to repeal the language included in the 2016-17 State Budget that permits the MTA to undertake or facilitate a wider range of development on MTA-owned property without regard to local zoning laws. This language undermines a municipality's fundamental power to control land use and could also reduce local property tax revenue. Nearly every community that has MTA-owned property within its boundaries is gravely concerned about the potential impact of this new law.

Non-Property Tax Revenues

The negative impact on revenue sources for cities and villages as a result of the property tax cap, high levels of tax-exempt property, declining State and federal aid, and stagnant sales tax collections all contribute to the challenges local governments face as they struggle to keep pace with increasing costs (many of which are mandate-driven). Earlier this month, Comptroller DiNapoli issued his Annual Report on Local Governments in which he highlights (and provides data to support) what NYCOM has been saying for years – that local governments have a revenue problem, not a spending problem. Given this fact, NYCOM is asking that the state address some of the loopholes and enforcement issues surrounding the local Gross Receipts Tax (GRT) – one of the few sources of non-property tax revenues available to cities and villages.

In January 2009, NYCOM was involved with an issue concerning National Grid and the applicability of the local Gross Receipts Tax (GRT) on energy transactions involving Energy Service Companies (ESCOs) – specifically the revenues associated with the sale of the commodity by ESCOs, as well as the revenue associated with the delivery to ESCO customers. At the time, National Grid believed that no portion of the transaction involving ESCO customers (neither the purchase of the commodity nor the delivery) was subject to the local GRT. In an attempt to resolve this issue, NYCOM requested and subsequently received an advisory opinion from the NYS Department of Taxation and Finance in July 2009 stating that ESCO transactions are, in fact, subject to the local gross receipts tax. Despite this opinion, many ESCOs still do not pay the tax to those cities and villages that impose it. In most cases, their rationale for no longer paying is similar to that of National Grid's – because the transaction does not take place entirely within the municipal boundaries. While this clearly is not consistent with the Advisory

Opinion we received from Taxation and Finance, the Opinion does not address the issue of where the transaction takes place. In addition, NYSE&G and RG&E have taken the position – unique among all other gas and electric utilities in New York State – that when a customer buys their gas and/or electric supply from an ESCO, these utility companies do not pay any GRT on the revenue they derive from the delivery of that commodity. These non-compliance issues impact almost all of the approximately 370 villages and 61 cities that impose the gross receipts tax – to the tune of several millions of dollars, as you have already heard about from the Mayor of the City of Rochester.

Furthermore, when the law governing the imposition of this tax was first enacted in the late 1950s, wireless technology was obviously not considered. Consequently, even though cellular companies – for all intents and purposes – are considered utilities, cities (outside of New York City) and villages are currently prohibited from imposing the utility gross receipts tax on cellular service providers since they do not fall within the State’s statutory definition for local GRT purposes. In recognition of the predominance of wireless technology and to promote equity in the tax treatment of various types of telecommunications providers, both the State and the City of New York made changes to their respective statutes to include cellular services as taxable for purposes of the State’s excise tax and the city’s gross receipts tax. NYCOM strongly supports amendments to General City Law and Village Law to include mobile telecommunications services within the scope of the local gross receipts tax.

Mandates and Mandate Relief

Adjustable Interest Rate on Judgments – Although the mandate relief that was promised back in 2012 when the tax cap was enacted has been virtually non-existent, NYCOM is happy to acknowledge and strongly support the Governor’s proposal that would provide for an interest rate on judgments and accrued claims that is tied to a market-rate as opposed to the current fixed rate of 9%. While the requirement to pay interest on judgments is fair and equitable, an unchanging fixed rate is not. The current rate of 9% is much higher than the interest rate that a judgment creditor would earn by investing the money. Additionally, under the current structure, defendants are penalized for delays that are frequently beyond their control. Consequently, this excessively high interest rate drives up taxpayer costs. Linking the rate of judgment interest to the

market rate makes sense, is the law in many other states, and is long overdue in New York.

Extend Design-Build to Counties – The design-build model is a project delivery system used as an alternative to the traditional design-bid-build model. Under the latter approach, design and construction are split – separate entities, separate contracts, separate work. The design-build system is an integrated approach that provides the municipality with design and construction services under one contract. By relying on a single point of responsibility, the design-build model minimizes risks for the project owner, reduces the delivery schedule by consolidating the design phase and construction phase with a single source of contact, and cuts costs by streamlining the construction process. The model can also be used to facilitate public-private partnerships in order to share the cost of building and infrastructure projects with the private sector.

Several state agencies are currently authorized to use design-build. In fact, the use of this procurement model was used on the new Tappan Zee Bridge and has generated millions in savings for the State. This begs the question – why the reluctance to grant such authority to local governments so they too can reap these benefits? The Governor’s Executive Budget proposes that this authority be granted to county governments only. If the rationale for this limited authorization is due to the State’s desire to take a “baby steps” approach, then NYCOM believes a better tactic would be to use a population threshold so that, in addition to many large counties, some of the largest cities, villages and towns that could greatly benefit from this procurement methodology will finally have the ability to do so.

Mandated Installment Payments for Property Taxes – The Governor’s Executive Budget contains a provision mandating local governments to allow partial payments of property taxes, unless a local government opts out. Not only does NYCOM believe that this is unnecessary, but the way the language is currently written suggests a clear lack of understanding as to how property tax collection currently works. There are already numerous sections in the Real Property Tax Law (RPTL) that provide the option for installment payments, which many local governments have adopted. Those that have

not adopted such a program likely have a good reason for deciding not to do so, including the administrative burden and financial exposure of acting, in essence, as a bank for delinquent taxpayers. In the case of the many local governments that collect property taxes on behalf of other jurisdictions, these provisions would only complicate these arrangements. Furthermore, the requirement that “separate charges for separate purposes be applied proportionately” will radically alter a long-established practice of how taxes collected are apportioned and accounted for. Finally, this proposal is yet another State mandate that would be imposed upon local officials, adding an unnecessary burden to the tax collection process without any regard for the local officials who will have to administer this function.

Conclusion

Cities and villages are doing all that they can to control spending while maintaining essential services, but the fiscal path they are on is unsustainable. The tax cap has been well below 2% almost since its inception, State aid has declined and the one glimmer of hope on any mandate relief went away in December 2014 when the Governor’s Mandate Relief Council was disbanded.

New York’s local governments need the funding, the tools and a genuine commitment from the State to help break down the barriers to efficiency and community revitalization. They also need our State leaders to stop pointing fingers and to start acknowledging and assisting our cities and villages and the economic growth they help generate.

Again, I thank you for the opportunity to testify at this important hearing. NYCOM looks forward to providing your committees with additional input as the budget making process continues.