



**ASSOCIATED GENERAL CONTRACTORS  
OF NEW YORK STATE, LLC**



The New York State Chapter of the  
Associated General Contractors of America

**Testimony of  
Associated General Contractors of New York State  
Walter Pacholczak  
Vice President of Government Affairs  
Joint Legislative Public Hearing on the 2017-18 Executive Budget  
Transportation Proposal**

Good morning Senate Finance Chairwoman Young, Assembly Ways and Means Chairman Farrell, and Members of the Committee. I am Walter Pacholczak, Vice President of Government Affairs for the Associated General Contractors of New York State (AGC NYS). AGC NYS is the leading statewide trade association for New York's construction industry representing union and open shop businesses. We represent nearly 600 contractor, subcontractor and related firms and have more than 80 years of experience working with public agencies and private developers to deliver quality projects that are the lifeblood of our economy. Our Members perform the majority of the public and private transportation, education, environmental and building infrastructure work in every region of New York State. I thank you for your commitment to rebuilding New York's roads, bridges and mass transportation systems and for the opportunity to express our views on the 2017-18 Executive Budget transportation proposal.

My comments today about the Executive Budget Proposal are limited to transportation capital funding and legislative proposals. There are a number of other proposals in the Executive Budget of interest to the construction industry—and some of concern—that we look forward to discussing with the Legislature in the coming weeks.

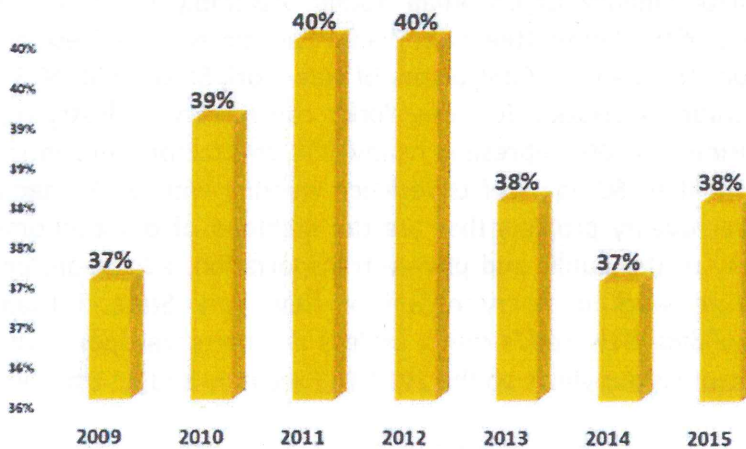
**New York State Department of Transportation (NYSDOT)**

The 2017-18 Executive Budget proposal continues the third year of the 2015-16 thru 2019-20 NYSDOT Five-Year Capital Program. The Governor proposes an increase to the 2017-18 DOT capital program from \$4.339B to \$5.5B. The \$1.16B increase will be funded from a \$564M state appropriation and an additional \$600M encumbrance that will be funded from using future federal aid. Over the next three years (17/18 - 19/20) the annual DOT Capital Program will average \$2.26B while the past three years (13/14 - 15/16) averaged \$1.79B per year; a net average increase of \$470 Million per year.

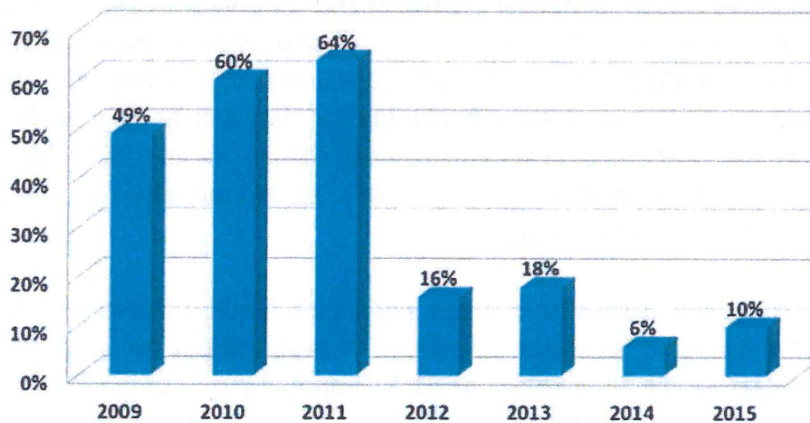
While the Legislature and Governor enacted significant funding increases over the next five years, the NYSDOT needs to implement a system of replacement not just repair. In 2010-11 and 2011-12 NYSDOT spent an average of \$1.81B annually on construction; over half of its pavement dollars were dedicated to replacement and major rehabilitation.

By 2013-14 and 2014-15 the agency was still spending about \$1.8B annually but replacement and major rehabilitation had fallen to just 12% of its pavement expenditures. With nearly 40 percent of the State's roads in fair/poor condition the NYSDOT can't be following its own pavement maintenance guidelines if only a small fraction of its projects are for replacement or major rehabilitation. The charts below demonstrate recent NYSDOT pavement conditions rated as poor or fair; pavement expenditures on replacement and major rehabilitation; and system needs.

### NYSDOT Pavement Conditions Fair/Poor



### Percentage of NYSDOT Pavement Expenditures on Replacement and Major Rehabilitation





## DOT - Five Year Almost \$7B Gap

NYS DOT Capital Program (in Million \$s)	SFY 2015-2019 Actual	SFY 2015-2019 Need
State/Local Construction	\$10,782	\$14,936
Engineering/Administration	\$3,565	\$4,707
Preventative Maintenance	\$1,849	\$1,672
Right of Way	\$330	\$415
Facilities/Equipment	\$90	\$410
Other Federal	\$125	\$674
Rail	\$370	\$500
Aviation	\$100	\$230
Non-MTA Transit	\$395	\$340
CHIPS/Marchiselli	\$2,840	\$3,710
State/Local Bridge and Culvert Program	\$500	\$500
Airport Program	\$200	---
NYS DOT Plan Total	\$21,147	\$28,094

The system needs still far outweigh the funding available and preservation is just one component of asset management. The added resources and certainty of the current multi-year capital program, while not fully meeting the system's needs, should allow the Department to begin transitioning out of a solely preservation mode.

A recent study by the American Society of Civil Engineers has evaluated the condition of New York's infrastructure – including roads and bridges, and issued a report card. The grades are dismal. The Department of Transportation has yet to release its own conditions report for 2014, 2015 or 2016. New York's taxpayers deserve better.

Full analysis and reporting is part of NYSDOT's agreement in the signed Memorandum of Understanding with the legislature and these reports are fundamental to the ability to transparently and comprehensively address the management of one of the State's greatest assets – its transportation system. The sooner the Department presents their conditions, the better they will be able to address the asset management and industry can construct the repairs and replacements needed in the most efficient way.

### Metropolitan Transportation Authority (MTA)

The Executive Budget proposes an appropriation of \$4.5B is an increase of \$30M. The MTA is currently holding public hearings on the projected \$2B Long Island Third Track project. AGC NYS is concerned about the availability of funding for the Third Track Project because the MTA would have to amend its current capital plan.

## **Legislative Proposals**

**TED Part E - Maximize the collection of tolls owed to public authorities.** This bill would specify that use of any highway, parkway, road, bridge or tunnel while intentionally avoiding tolls in the same fashion qualifies as a theft of services misdemeanor. The bill allows DMV to suspend or revoke the vehicle registrations of owners who persistently violate toll collection rules of New York toll authorities. Under a recently adopted regulation (15 NYCRR § 127.14), DMV would suspend New York registrations of owners who have failed to pay such tolls and violation fees on at least five separate days within eighteen months. However, no provision allows DMV to suspend registrations of vehicles registered in other states who fail to pay tolls and violation fees when using New York facilities. The bill would authorize DMV to enter into reciprocal agreements with other states and Canadian provinces. This change would allow for mutual enforcement of laws to target persistent toll violators that seek to avoid enforcement authorities by leaving jurisdictional borders. AGC NYS supports this proposal.

**TED Part O - Extends the effectiveness of provisions of law relating to participation by minority and women-owned business enterprises in state contracts.** This bill would extend the effectiveness of provisions of law relating to participation by minority and women-owned business enterprises (MWBE) in state contracts for an additional one year. The long overdue New York State Disparity Study is once again delayed in 2017. The Legislature should demand that the results of the study are released and reject this proposal.

**TED Part P – AGC NYS supports extending the Infrastructure Investment Act (The Act) to allow authorized entities that may utilize design-build contracts.** This bill would expand the provisions of The Act to enable all State agencies and public authorities, as well as counties outside of New York City, to award a contract to a single entity for both the design and construction aspects of a project in order to optimize quality, cost and efficiency. AGC NYS is concerned about expanding the definition of The Act to include municipalities. Any expansion of design-build to municipalities must include increased training and public transparency of the process to avoid the specter of fraud, corruption, favoritism, cronyism or improvidence.

**GGER Part K - Appointment of a Chief Procurement Officer.** This bill would authorize the creation of a Chief Procurement Officer who shall serve as the principal officer tasked with oversight of state procurements. The concept of having one individual reviewing the tens of thousands of annual state contracts defies logic and would further delay vital construction projects. Nearly all of the contracts awarded by the State proceed without the specter of fraud, corruption, favoritism, cronyism or improvidence. AGC NYS urges the Legislature to reject the appointment of a Chief Procurement Officer.

**TED Part E - Maximize the collection of tolls owed to public authorities.** This bill would specify that use of any highway, parkway, road, bridge or tunnel while intentionally avoiding tolls in the same fashion qualifies as a theft of services misdemeanor. The bill allows DMV to suspend or revoke the vehicle registrations of owners who persistently violate toll collection rules of New York toll authorities. Under a recently adopted regulation (15 NYCRR § 127.14), DMV would suspend New York registrations of owners who have failed to pay such tolls and violation fees on at least five separate days within eighteen months. However, no provision allows DMV to suspend registrations of vehicles registered in other states who fail to pay tolls and violation fees when using New York facilities. The bill would authorize DMV to enter into reciprocal agreements with other states and Canadian provinces. This change would allow for mutual enforcement of laws to target persistent toll violators that seek to avoid enforcement authorities by leaving jurisdictional borders. AGC NYS supports this proposal because it provides a meaningful mechanism to take action against individuals that evade the payment of tolls and associated fees.

**PPGG Part J - New York State Buy American Act.** This bill would expand the contract and procurement provisions of State Finance Law and Public Authorities Law to require State agencies and authorities to give preference to American-made products when issuing a procurement and entering into contracts. This bill would amend the State Finance Law and the Public Authorities law to include Buy American preference requirements for all contracts and procurements in excess of \$100,000. Contractors would be required to certify whether the products are American made. AGC NYS is opposed to this proposal because the cost and availability of American-made products is unknown and would likely contribute to the decline of road and bridge conditions.

**Electronic Tolling.** While not explicitly stated in the 2017-18 Executive Budget proposal, AGC NYS is gravely concerned by numerous recent reports of the possibility of the significant diversion funds from the Thruway's approved Capital Program budgets in 2017 and 2018 for purposes of implementing high-speed, all-electronic tolling.

While AGC NYS supports modernization and a move to cashless tolling, such an effort cannot be undertaken at the expense of the Authority's already limited Capital Program, just approved by the Board in November. Simply stated, high-speed electronic tolling is of little value if the Thruway system is in such poor condition it cannot sustain high-speed travel. We have already seen a speed limit reduction because of road conditions on a stretch of Thruway as a result of deferred construction. Such a move would have a dire impact on the aging Thruway system and its crumbling bridges and pavements all across New York State.

The Thruway has recognized that attention to asset management is crucial and a plan must be adhered to in order to address the aging-out of system components. The entire system is predominantly comprised of components that are more than 60 years old. Of the nearly 2,400 lane-miles of pavement on the Thruway system, only 10% has been reconstructed leaving nearly 2,200 lane-miles or 90% of the system still in need of reconstruction. Over the past few seasons, the Thruway has advanced less than one project per year at approximately 50 lane-

miles or less. Similarly, of the 809 bridges on the system, there are about 620 structures currently over the age of 60 years. Nearly, 80% of the crossings are exposed to further deterioration and risk. Current Thruway capital investment is only 5-10 bridges per year extending the replacement duration to 100 years or more from now.

Maintaining, repairing and reconstructing that system--which is such a critical lifeline for New York's economy and communities--must continue to be the Thruway Authority's top and overriding priority. Electronic tolling, as laudable as it is, must be accomplished through the addition of resources, not by decimating the Authority's already meager Capital Program.

### **Conclusion**

Once again, thank you for the opportunity to express our views about the 2017-18 Executive Budget proposal. Modern, safe and reliable infrastructure is of paramount importance not only as a catalyst for job creation but also as a key driver for the State's economic performance and competitiveness. It contributes to the health, safety, education and quality of life of our citizens and as the means to ensure the efficient movement of people and goods. Simply put, New York State cannot be open for business if our roads, bridges and transit systems are closed. The Executive Budget proposal offers key advancements and investments, but also presents areas in need of improvement. We look forward to working with the Legislature to improve upon the Executive Budget proposal to best meet the whole State's significant infrastructure needs. Thank you for this opportunity.



**ASSOCIATED GENERAL CONTRACTORS  
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The New York State Chapter of the  
Associated General Contractors of America

January 5, 2017

The Honorable Matthew Driscoll, Commissioner  
New York State Department of Transportation  
50 Wolf Road  
Albany, New York 12232

Re: January 3 Asset Management Meeting

Dear Commissioner Driscoll:

Thank you and your key staff for meeting with us and our partners in organized labor this past Tuesday. We appreciate your candor and willingness to take the time for the conversation about asset management and the current multi-year capital program.

Our membership and the trades are very aware of the fiduciary responsibility you have to fairly distributing the funds available to the highway system. We all know that the needs still far outpace the funding and we will continue to advocate for adequate and balanced NYSDOT funding from both State and Federal resources. We look forward to the receipt of the NYSDOT priorities so that a unified industry message can be delivered to the state and federal delegations.

A key topic of our conversation revolved around the scope of work encompassed by the projects listed in the 2015-2019 Capital Program Memorandum of Understanding. With the current multi-year funding commitment, we were anticipating seeing the types of work turn more to repair and replacement versus the preservation mode implemented in the past half dozen years of year-to-year funding uncertainty. Those scant letting programs with limited scopes of work have led to many workers attaining fewer work hours, apprentices having less training opportunities and firms being unable to utilize their fixed plants to the fullest. These factors all generate cost and long-term industry impacts.

The indication is NYSDOT is actually moving into asset management instead of preservation only and that the MOU project descriptions might not clearly convey the scope of work involved in many projects. To help clarify the MOU project list, it was agreed that your staff, through Ron Epstein, will "translate" the descriptions to better match the scopes and provide this listing to us. We appreciate this and look forward to that discussion.

We also agreed that continuation of periodic meetings such as this one will serve our common industry and we will reach out to get the next conversation scheduled for a mutually convenient time in the next quarter.

Commissioner Driscoll  
January 5, 2017  
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Our members look forward to the announcement of the eighty-seven BridgeNY projects to be delivered for bid by the locals over the next year, as well as the remaining 2016-2017 capital program. This is all work that is greatly needed.

Again, thank you for your time and commitment to our common goals for providing an improved highway system in New York.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael J. Elmendorf II". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Michael J. Elmendorf II  
President & CEO  
Associated General Contractors of New York State

CC: William Banfield, Northeast Regional Council of Carpenters  
Sam Fresina, New York State Laborers  
Marina O'Donnell, New York State Conference of Operating Engineers





**ASSOCIATED GENERAL CONTRACTORS  
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February 8, 2017



The New York State Chapter of the  
Associated General Contractors of America

The Honorable William Finch  
Acting Executive Director  
New York State Thruway Authority  
200 Southern Boulevard  
P.O. Box 189  
Albany, New York 12201-0189

**Re: Potential Diversion of Capital Program Resources for All-Electronic Tolling**

Dear Mayor Finch:

The Associated General Contractors of New York State (AGC NYS), the leading statewide construction industry association, is gravely concerned by numerous recent reports of the possibility of the significant diversion funds from the Thruway's approved Capital Program budgets in 2017 and 2018 for purposes of implementing high-speed, all-electronic tolling.

While we support modernization and a move to cashless tolling, such an effort cannot be undertaken at the expense of the Authority's already limited Capital Program, just approved by the Board in November. Such a move would have a dire impact on the aging Thruway system and its crumbling bridges and pavements all across New York State. The Thruway has recognized that attention to asset management is crucial and a plan must be adhered to in order to address the aging-out of system components. The entire system is predominantly comprised of components that are more than 60 years old. Maintaining, repairing and reconstructing that system--which is such a critical lifeline for New York's economy and communities--must continue to be the Thruway Authority's top and overriding priority.

Of the nearly 2,400 lane-miles of pavement on the Thruway system, only 10% has been reconstructed. This leaves nearly 2,200 lane-miles--90% of the system--still in need of reconstruction. We understand that the Authority has established a goal to accomplish this reconstruction within 20 years. Given that timeframe, the Capital Program must attend to reconstructing at least 110 lane-miles per year. Over the past few seasons, the Thruway has advanced less than one project per year, at approximately 50 lane-miles or less. At the current rate, the system will not see reconstruction before more than 40 years has elapsed. One-hundred year old concrete slabs overlain with asphalt will not support the growing traffic volumes and will crumble.

Similarly, of the 809 bridges on the system, there are about 620 structures currently over the age of 60 years. Nearly 80% of your crossings are exposed to further deterioration and risk. Using the same 20 year window for attending to the needs, the rate of replacements must be 31 bridge replacements per year. Current Thruway capital investment is only 5 to 10 bridges per year--extending the replacement duration to 100 years or more from now. The system was obviously not designed to be fully serviceable at an age of 160 years.

The Honorable William Finch  
February 8, 2017  
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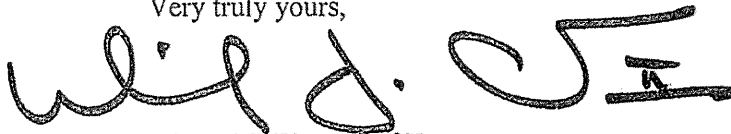
As you are well aware, the current Capital Program is barely able to meet the Thruway's need to provide some sort of ride quality, much less address the aging out of the entire system. Diversion of the modest budgeted funding for other non-safety related, non-crucial asset investment will send the system conditions spiraling downward at an accelerating pace.

**Simply stated, high-speed electronic tolling is of little value if the Thruway system is in such poor condition it cannot sustain high-speed travel. We have already seen a speed limit reduction because of road conditions on a stretch of Thruway as a result of deferred construction.**

We hope you can allay the very serious concerns we are hearing from the industry across the State by dispelling these troubling reports of the cannibalization of the Thruway's only recently approved Capital Plan. We implore you to not divert Capital Program funds and preserve the integrity of the Thruway's well-documented asset management planning.

If cashless tolling is to be implemented, it must be achieved without putting the rest of the Thruway system at risk. Such modernization, as laudable as it is, must be accomplished through the addition of resources, not by decimating the Authority's already meager Capital Program.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael J. Elmendorf II". The signature is fluid and cursive, with a large "M" and "E" being particularly prominent.

Michael J. Elmendorf II  
President & CEO

Associated General Contractors of New York State

CC: The Honorable Andrew M. Cuomo, Governor  
The Honorable Joseph Robach, New York State Senate  
The Honorable Michael Ranzenhofer, New York State Senate  
The Honorable Catherine Young, New York State Senate  
The Honorable David Gantt, New York State Assembly  
The Honorable Jeffrey Dinowitz, New York State Assembly  
NYS Thruway Authority Board of Directors  
AGC NYS Highway Board of Governors