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The 2018-19 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. Helene Weinstein, Chair

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Thank you for affording NYCOM the opportunity to express the views of our 580 member cities and villages regarding the 2018-19 Executive Budget. The State Budget, and the State Legislature's contributions to its ultimate form, play an integral role in determining the capacity and ultimate effectiveness of local leaders throughout New York.

Local Shared Services

It is important to remind you that city and village governments, along with their municipal counterparts at the town and county level, operate in a governmental world where they are held accountable by constituents on the daily ability of the local government to provide essential municipal services in the most cost effective manner. A fundamental strategy used in meeting that test is working cooperatively with peer municipal governments to share services, personnel and equipment, and even transfer functions when a service can be more effectively maintained or enhanced via such a consolidation of services.

By any objective measure, and in stark contrast to the inaccurate declarations by the Governor, for decades New York's municipal governments have led the way in removing duplication and strengthening their sharing of services. Many of the members of your committees have served in local government and know firsthand the truth of widespread shared services in the municipal world. More can always be done, but rest assured that mayors view shared services as an ongoing aspect of governing at the local level and remain vigilant in their search for additional ways to work cooperatively with their governmental partners.

When the Governor last year proposed a mandatory (on municipalities, not on school districts), top-down, undemocratic approach to shared services, along with state budgetary linkage between AIM funding and countywide shared service panels, NYCOM and our mayors objected strongly. While it was unfortunate that the Governor chose to pursue a State-mandated solution to a problem that, at the local level, doesn't exist, thankfully the Senate and Assembly reworked the Governor's proposed consolidation mandate in a way that respects local home rule and acknowledges the vast amount of longstanding shared services at the municipal level.

At the urging of NYCOM and local officials throughout New York, the Legislature rejected the un-democratic countywide referendum and the imposition of one community's will onto another. In place of the Executive's proposal, the adopted State Budget for 2017-18 included a temporary experiment in county-led, consensus-driven development of a countywide shared services plan. Working under a very tight timeframe for the first year of the program, county chief executive officers took varying approaches to the CWSSI mandate, from developing comprehensive plans with all or most of the mayors and supervisors in the county, to deferring action until 2018 when a more well-thought-out and attainable plan could be developed. To the degree to which a particular county moved forward with developing a plan in 2017, our city and village mayors were willing participants, offering proposals and open to considering those of other elected officials.

The CWSSI Property Tax Panels in 34 of the 57 counties outside of New York City developed, adopted and filed a "Property Tax Savings Plan" for 2017, with a total of 389 proposed projects and $208 million in estimated savings for 2018. While at first blush these results seem significant, a deeper look into the plans, as summarized in the Rockefeller Institute report and data collected by NYCOM, shows that $128 million (or 62%) of the estimated statewide savings came from a single, long-pursued consolidated wastewater treatment facility proposed by Nassau County and the City of Long Beach, and 74% of the total estimated statewide savings came from just five of the 389 proposed projects.

Before considering the Governor's 2018-19 proposal to make the CWSSI experimental mandate permanent, the Legislature needs to let this experiment play out and truly evaluate its results. The 389 proposed projects developed in 2017 are just that – proposals – and they and the plans and proposals still to be developed in 2018 – as mandated under the two-year pilot program – remain speculative at best. It will take at least two more years for plan development and project implementation, so it would be unwise to make a program permanent so early in its gestation. Furthermore, many of the shared services proposals, particularly those with the largest amount of potential savings, are contingent upon legislative and/or regulatory removal of legal barriers. Until (1) these impediments are eliminated or reformed and (2) school districts, as the largest imposer of property taxes, are required to participate in the development of the property tax savings plans, the potency of the CWSSI program will remain relatively weak and not worthy of making permanent. The Governor's proposal in the 2018-19 Executive Budget to make the CWSSI pilot program permanent and all municipal performance aid dedicated to CWSSI-generated projects is premature and discriminates against shared service arrangements developed organically among local leaders outside of the State-dictated CWSSI structure. NYCOM urges the Senate and Assembly to reject this proposal and instead undertake a thorough review of the CWSSI pilot program after its second set of proposed projects are implemented in 2019.

In the meantime, the most effective action you could take is to remove the statutory and regulatory barriers to intermunicipal cooperation. The good news is that the Governor's Executive Budget begins to embrace barrier-removal as a powerful way for the State to enable greater, more beneficial cooperation at the local level. The Governor is easing rules regarding the creation of local healthcare cooperatives to reduce local health insurance costs, one of the largest and fastest growing expenses in municipal budgets. NYCOM has long advocated such a change and we look forward to working with the Department of Financial Services to assist our smaller municipalities in benefiting from the pooling of health insurance authorized by Article 47 of the Insurance Law.

A major roadblock to local efficiency and consolidation efforts is the disincentive to transfer a service function from one municipality to another under the tax cap statute. Budgetary actions intended to keep a municipality's spending and property taxes from growing – including attrition, use of fund balance or reserves, and deferring maintenance – are allowable means for a local government to keep its levy growth under the tax cap. However, if a municipality agrees to transfer a service function to another locality in order to maximize efficiency while continuing to provide an essential service, the municipality that foregoes the function is actually punished by having the tax cap lowered dollar-for-dollar for the savings they achieve through the functional consolidation. NYCOM is developing legislative language to address this counterproductive aspect of the tax cap statute so that local leaders can move forward with transfer of function initiatives. We hope we can count on the support of your two committees in making this much-needed change.

Increase AIM Funding to Reduce Municipal Property Taxes

While working to maximize the benefits of shared services is a worthwhile effort, meaningful property tax relief doesn't stand a chance unless the State Legislature and the Governor fund a predictable and growing program of general purpose state aid for municipalities. New York's AIM program, when adequately funded, has proven to be an effective 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 $112 million (15% in real dollars). New York City's AIM allocation – totaling $328 million – was completely eliminated in SFY 2010-11. Over the same period, school aid increased by more than $5 billion and well-exceeded the rate of inflation. School taxpayers, who shoulder 2/3rds of New York's property tax burden, are deserving of such financial relief. But so are the municipal taxpayers who fund essential municipal services. 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. The newly imposed cap on the federal deductibility of state and local taxes make an increase in AIM funding an imperative.

State Share of Funding Municipal Infrastructure

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 without which transportation, water and sewer systems would not operate safely. NYCOM members appreciate the State's investment in municipal infrastructure through a variety of critically important programs, including the CHIPS, Marchiselli, PAVE NY and BRIDGE NY transportation aid funding streams, as well as the Water Infrastructure Improvement Act. However, we know that the local need for infrastructure funding far exceeds what is currently being made available by the state.

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 State funding to allow them to maintain aging infrastructure, as well as invest in new development. NYCOM is requesting restoration of 2017-18's $65 million Extreme Winter Recovery Money for the repair and resurfacing of local roads, which was not included in the Governor's 2018-19 proposal, and a permanent increase in CHIPS base funding to help achieve these goals.

In a related State-local transportation program, 38 cities 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. NYCOM has proposed an inflationary adjustment to $1.80 per square yard which 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 $12 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.

Non-Property Tax Revenues

The negative impact on city and village revenues from 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). Data from the State Comptroller documents the fact that cities and villages have a revenue problem, not a spending problem. Given this fact, NYCOM supports the Governor's Executive Budget proposals to (1) require larger marketplace providers (i.e., those generating more than $100 million in annual sales) to collect sales and use tax on taxable sales of tangible personal property that they sell to New York residents on the Internet, and (2) eliminate the sales tax exemption on the non-residential transmission and distribution of gas or electricity when purchased from an ESCO (Energy Service Company). These proposals – which would level the tax-paying playing field rather than increase taxes – would provide a much-needed increase of $142 million and $45 million in local revenue, respectively.

NYCOM also urges the Legislature to simultaneously clarify the obligation of ESCOs to pay the local gross receipts tax just as is required of regulated public utilities. ESCO non-compliance with local gross receipts tax laws is depriving cities and villages of significant revenue that is thereby shifted onto already overburdened property taxpayers.

Mandates and Local Home Rule

State mandates on municipalities are undemocratic in that they violate local home rule. Furthermore, they punish property taxpayers and emasculate locally elected leaders. Unfortunately, the Executive Budget includes several such state mandates, including:

Small Cells – The 2018-19 Executive Budget would negatively impact all municipalities and their ability to manage and monetize wireless facilities in public rights-of-way (ROW). Specifically, the language would grant rights of access to wireless providers, mandate specific application procedures, and limit application fees and rates for wireless facilities installed in the ROW, irrespective of ownership. Most significantly, this language would limit how much a municipality may charge a wireless provider when renting space on municipally-owned structures. NYCOM urges the Legislature to reject this wireless industry-drafted circumvention of local home rule and the historic right of municipalities to govern the public right-of-way.

Expansion of the State's MWBE Requirement – In 2014, Governor Cuomo established a goal requiring that 30% of all State contracts go to minority- and woman-owned enterprises (MWBE). The 2018-19 Executive Budget includes language that would expand this 30% requirement to include those local government contracts supported by State funding, and to those entities that subcontract with such local governments. We believe such a mandate, particularly in certain areas of the State, will be impossible to comply with. In addition, this proposal will likely encourage the awarding of contracts based on criteria other than cost and the quality of the bid, thereby harming property taxpayers.

State Intrusion into Local Code Enforcement – The Executive Budget would require local code enforcement officers to periodically inspect high risk lead paint areas (as designated by the NYS Commissioner of Health) in residential rental properties pursuant to rules promulgated by the Secretary of State. Under this proposal, such rules would establish inspection requirements at specified times, including, but not limited to, as part of rental property certificate of occupancy programs or in response to complaints. This new requirement would be a significant expansion of current mandatory inspection requirements and thus would represent a significant unfunded mandate for local governments.

MTA "Value Capture" Intercept of Local Property Taxes – The Executive Budget, as proposed, would allow the MTA Board to unilaterally intercept New York City property tax revenue, a mandate beyond compare and an absolute violation of local home rule. If enacted and implemented, this mandate would have the potential to siphon billions of dollars away from essential public services provided by New York City to its 8.5 million residents. NYCOM joins with the City of New York in strongly opposing such an unprecedented granting of power to a state authority at the expense of local government.

NYCOM, however, is pleased to acknowledge and strongly supports 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.

Funding to Fight the Opioid Crisis

The scourge of the opioid crisis is being felt in every corner of New York, and the fight to halt this corrosive crisis requires a community-wide approach, as well as the frontline efforts of local governments. The Executive Budget would establish an opioid epidemic surcharge imposed on the first sale of all opioids in the State to fund an opioid prevention, treatment and recovery account. The surcharge is intended to fund state opioid treatment, recovery and prevention and education services, and to also discourage the use of opioids by placing the share of societal costs from opioid use on the manufacturers, producers and distributors who financially gain from the use of these drugs. NYCOM supports this proposal, but further supports an increase in the surcharge in order to partially fund the integral role municipal governments play in fighting the opioid crisis via local law enforcement, fire departments, EMTs and other support services.

Budget Super-Powers

The Executive Budget would continue language agreed to with the Legislature in 2017-18 providing the Governor with broad powers, in consultation with the Legislature, to reduce certain local assistance payments when federal funding is reduced from projected levels. In addition, the Governor's Budget includes new language allowing him to reduce funding for local assistance programs if state tax revenues are below projections. Specifically, in the event of a shortfall in tax receipts in excess of $500 million, the Director of the Budget would be authorized to uniformly reduce local assistance programs. NYCOM has deep concerns with respect to the power this would give the Governor to unilaterally amend the enacted state budget without approval of the Legislature, particularly when such unfettered power places desperately needed municipal aid at risk.

Conclusion

Cities and villages are doing all that they can to control spending while maintaining essential services, but the fiscal path they are on – with insufficient State support – is unsustainable. The tax cap has been well-below 2% almost since its inception, State aid has declined and mandate relief has been largely illusive. 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. We urge you to be partners in reversing these trends and making our cities and villages and State strong again. NYCOM stands ready to assist you in that critically important effort.