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Service and Representation for Town Governments of New York State

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PUBLIC HEARING
on the
2019-2020 Executive Budget

Presented to
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and
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Presented by

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Greeting and Preliminary Statement

Good Afternoon, we are very 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. With me today is Dorothy Goosby, Councilwoman, Town of Hempstead, Nassau County and Valerie Cartwright, Councilwoman, Town of Brookhaven, Suffolk County. We are here to discuss the 2019-2020 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 town perspective as you carry out this process.

Restore and Increase AIM Funding

(PPGG Part I)

It is imperative that Aid and Incentives for Municipalities (AIM) funding not only be restored but increased in order for local governments to keep property taxes down, stay below the tax cap and provide services for residents. The Executive Budget slashes AIM funding by approximately $60 million, and of that, towns collectively would lose $42.8 million (PPGG Part I). The $60 million cut was arrived at by looking at what percentage of AIM funds made up 2017 municipal expenditures. If a town relied on AIM for less than 2 percent of its expenditures, it will no longer be eligible to receive AIM money. In practice, this means that 846 out of 933 towns, or 91 percent, will permanently lose AIM funding.

We have heard three different rationales behind eviscerating AIM, all of which are easily refuted:

> (1) Because the amount is de minimus (i.e. under 2 percent of expenses), the impact felt by towns from the loss of AIM funds will be negligible;
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> (2) Local governments have $1.6 billion in reserves, so, comparatively, a loss of $60 million will not be significant (see Budget Briefing Book, pg 116); and
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> (3) The loss of AIM funding will be neutralized by other revenue sources, such as an internet sales tax (see https://www.democratandchronicle.com/story/news/politics/albany/2019/01/17/andrew-cuomo-budget-aim-funding-town-village/2602429002/).

First, relying on AIM for less than 2 percent of expenses may sound paltry on paper, but in reality, this money has a significant impact. For example, the 2019 budget in the Town of Brookhaven in Suffolk County planned to use its estimated $1.8 million in AIM funding for fire prevention and public safety services, and in its planning and building department. Now, it anticipates a freeze on promotions and hiring, layoffs and delayed services – a substantial effect on constituent services. We have received numerous calls from our members concerned about the money on which they depend and have accounted for in their budgets that will suddenly vanish middle of the fiscal year. Those who handle day-to-day operations, respond to resident comments and inquiries and manage the budget are best suited to say what impact the loss of this money will have, and we can assure you that town officials are, in fact, deeply troubled about the potential loss of this money.

Town of Hempstead	Nassau	$ 3,848,885
Town of Brookhaven	Suffolk	$ 1,808,932
Town of Islip	Suffolk	$ 1,797,900
Town of Oyster Bay	Nassau	$ 1,682,422
Town of Babylon	Suffolk	$ 1,115,651
Town of Huntington	Suffolk	$ 1,067,256
Town of North Hempstead	Nassau	$ 1,023,565
Town of Cheektowaga	Erie	$ 820,898
Town of Smithtown	Suffolk	$ 671,178
Town of Amherst	Erie	$ 663,670

Also, the fallacy that eliminating AIM will have little to no noticeable effect is particularly egregious, given the current financial landscape downstate towns are operating in thanks to the federal tax law that caps local property tax deductions at $10,000. As seen in the chart, of the top 10 towns losing the most AIM, eight of them are located in Nassau and Suffolk counties, the very area that is hardest hit by the SALT deduction limitation. According to the Town of Hempstead comptroller, the loss of AIM would equal a 12.2 percent tax increase for residents, which would require the town to override the tax cap, and the Town of Brookhaven would require a 23 percent tax increase to make up this lost revenue. Instead of using tools like AIM funding to help **reduce** the property tax burden, the Executive Budget exacerbates the problem by taking that money away. Last year, the Governor called the changes to the federal tax law an assault on New York, and in particular, noted the effect on downstate (see https://www.governor.ny.gov/news/governor-cuomo-launches-tax-fairness-new-york-campaign). Ironically, this year, it is the governor's own Executive Budget that would further pummel towns and taxpayers, particularly on Long Island and the lower Hudson Region, a proverbial salt-in-the-wound action.

As for the budget office's second justification for eliminating AIM, to compare AIM funding to reserve funds is unfair and inaccurate, as they serve two distinct purposes. Reserve funds are a crucial part of municipal finances and a way to legally save money for future infrastructure repairs, equipment upgrades or other needs. Municipalities' bond ratings are determined by their reserve funds: the more saved, the more favorable the bond rating. If towns are required to draw upon their reserves to make up for lost AIM funding, towns' bond ratings could drop. In addition, there are statutory limitations on how and when the money can be used (*see* generally General Municipal Law §§ 6-c – 6-u). Conversely, AIM is unrestricted aid, meant to be used at the municipality's discretion – reserve funds and AIM funds are in no way interchangeable. Taking away money with flexible spending ability because towns planned for future expenses defies common sense and seems overtly punitive in nature.

Moreover, the Legislature should not labor under the misapprehension that towns will make up for lost AIM funding with other sources of revenue found in the Executive Budget. For example, although money from internet sales tax may be a new funding source, the fact remains that ***counties*** collect sales tax and are not required to share it with towns. Towns should not be expected to rely on the largess of other local governments, which are similarly saddled with their own budgetary concerns, constraints and mandates. Not to mention, frankly, it is not the counties' responsibility to replace state funding. It's like robbing Peter to pay Paul and then hoping Paul shares some of his newfound windfall with Peter.

Finally, eliminating AIM is about more than money; it would signify that the state is no longer interested in partnering with local governments, particularly with towns and villages. In his State of the State address this year, the Governor said that New York believes in community and mutuality, in shared success and cooperation, and that when one is lifted, we all are lifted. Honestly, these words ring hollow in light of parts of this Executive Budget proposal. The state and towns do share common goals: to reduce property taxes and offer high-quality services to our residents; providing reliable, unrestricted state funding is a way to accomplish that. As you develop your one-house budgets and negotiate the final State Budget, we encourage you to take the lead in implementing this vision of a cooperative and rewarding future by restoring and increasing AIM.

Transportation and Infrastructure

Roads and Bridges

The state assists towns on just 9 percent of town transportation repairs, signifying room for improvement when it comes to state assistance for the repair and maintenance of local roads and bridges. Of the $1.4 billion towns spend on their roads and bridges annually, just $130 million comes from CHIPS. Despite numerous studies and capital plans confirming the need for increased funding, and widespread vocal legislative support for more money, CHIPS and Marchiselli have remained flat since 2013. Short-term and ad hoc funding programs, such as last year's Extreme Winter Recovery Program, PAVE-NY and BridgeNY, while helpful, do not (and are not meant to) supplant increases to the CHIPS base. Both PAVE-NY and BridgeNY expire in 2020, and, although it was funded for $65 million last year, there is no money for the Extreme Winter Recovery Fund, illustrating the pitfalls of too much reliance on these types of temporary funding programs.

Increasing CHIPS funding now not only ensures the safety of New Yorkers and helps our state's economy, it will actually ***save*** money for both local governments and taxpayers. Every $1 worth of maintenance on roads and bridges we put off will end up costing an additional $4 to $5 in future repairs (*see Pavement Maintenance*, by David P. Orr, PE

Senior Engineer, Cornell Local Roads Program, March 2006). Moreover, New York drivers are, on average, each losing $2,768 a year because of poor, unsafe roads and bridges and traffic jams (see *New York Transportation by the Numbers – Meeting the State's Need for Safe, Smooth and Efficient Mobility*, by TRIP, November 2018). Anyone who drives in New York knows that our transportation infrastructure is crumbling and in dire need of repair. Now more than ever, it is important to prevent New Yorkers from leaving, attract businesses and services to the state and keep property taxes down; increasing CHIPS and providing additional money for roads and bridges is a common-sense, financially justifiable approach to accomplish this. We strongly encourage the Legislature to fight for CHIPS funding increases as you adopt the final budget.

Clean Drinking Water Funding

Thank you for your continued investment in clean drinking water through the creation of the Infrastructure Investment Act of 2015 (WIIA) and the Clean Water Infrastructure Act (CWIA), which provide funding for local water and wastewater infrastructure through grants and low- or no-interest loans. The Governor announced an additional $2.5 billion investment in clean drinking water over the next five years, with $500 million included in the SFY 2020 Capital Appropriations Bill. In addition to these loans and grants, local governments would benefit from a dedicated funding program similar to CHIPS, so towns could factor predictable annual funding amounts into multiyear capital management plans (see e.g. SWAP legislation A424/S554).

Real Property Tax Issues

The Association of Towns Opposes a Permanent Tax Cap (PPGG Part G)

The Executive Budget proposes to make the property tax cap permanent (PPGG Part G). The Association of Towns does not support a permanent tax cap, as towns are responsible fiscal managers. Any local government that exercises its statutory authority to override the cap does so to meet a pressing or urgent need for its residents. Towns have been seeking reforms to the tax cap that remain undelivered, including:

- <u>Infrastructure Costs under the Tax Cap:</u> A simple legislative fix to an inequity in the way capital projects are handled for school districts and towns could potentially spur growth and dramatically cut back on tax cap overrides. School districts are not required to include capital project costs in their tax cap calculations because they are subject to referendum requirements and voter approval. However, while town capital projects are also generally subject to referendum requirements and voter approval through various areas of law [e.g., General Municipal Law, §6-c Town Law, §§81,220; Local Finance Law, §35.00], towns must include these costs in their cap calculation. We believe capital projects subject to referendum and voter approval should be handled consistently under the property tax cap for both municipalities and school districts.

- Growth from PILOT and Tax-Exempt Properties: The tax cap formula should be adjusted to accurately reflect growth and costs within a municipality attributable to PILOT and tax-exempt properties, which currently are not considered when determining a local government's allowable levy limit. These omissions from the formula penalize municipalities that experience increased costs and development, as PILOT properties use municipal services but are not included when calculating the levy limit. PILOT and tax-exempt properties use town services and resources, so the growth associated with these properties should be included in the tax cap calculation.
- True 2 Percent Cap: Since its inception in 2011, the 2 percent tax cap has often been well below 2 percent. If the tax cap is to be made permanent, it should be a true 2 percent, rather than dictated by factors beyond a local government's control.
- Removal of Shared Services Barrier: The requirement that local governments reduce their tax levy limit by the amount of any savings realized from a transfer of function is a barrier to shared services nestled right in the language of the real property tax cap. Ultimately, the levy limit reduction serves as a ***disincentive*** to share services. To achieve the Governor's stated shared service goals, this contradiction should be removed from the tax cap formula.

Rather than prioritizing the permanency of tax cap, we suggest that the Legislature consider making these important reforms to the tax cap to better support to towns as they engage in proper fiscal planning and management.

Real Property Tax Administration Efficiencies
(Revenue Part J)

Part J of the Revenue Article VII Bill seeks to make real property tax administration more effective and efficient. To this end, Subpart A grants, at local option, assessment relief to properties that have been damaged as a result of a state disaster emergency, even if the damage occurred after the taxable status date. The Association of Towns supports this practical and efficient solution to real property tax administrative issues, as otherwise, special state legislation is necessary to provide relief to those that sustained damage from the emergency.

Along these same lines, real property tax payments have deadlines to which we must adhere. While there is generally a month to pay property taxes interest-free, taxpayers, for whatever reasons, often choose to wait until the last day to make their payment. In some years, this has presented a problem for those taxpayers that face a deadline of

January 31, as winter storms can often make travel to the post office or the town hall treacherous if not altogether impossible. Indeed, there was a travel ban in place in western New York on January 31, 2019, making it extremely difficult for taxpayers to make a timely payment if they had not yet paid their taxes. Rather than wait for special state legislation to extend the interest-free deadline for those taxpayers impacted by significant weather emergencies, we propose adopting legislation as part of the 2019-2020 state budget that would give collecting entities the local option to extend the real property tax deadline when there is a significant weather emergency.

Further Erosion of the Real Property Tax Base: Exemptions for Certain Energy Systems
(Revenue Part AA)

Part AA of the Revenue Article VII Bill of the 2019-2020 Executive Budget strips local governments of the authority to impose real property taxes or enter into a Payment in Lieu of Taxes (PILOT) agreement on certain energy systems if such systems are located on real property owned or controlled by the state. The Association of Towns strongly opposes this proposal, as it infringes upon a local government's ability to impose real property taxes in a fair and equitable manner. Local governments depend upon real property tax revenue to provide essential services and comply with state mandates. Removing the ability to tax or enter into a PILOT agreement with the owners of these energy systems catastrophically shifts the tax burden onto the non-exempt owners and businesses, to the benefit of the state and the energy system owners. The systemic erosion of the tax base will ultimately result in higher taxes as the burden is shifted to non-exempt owners, as well as a decrease in essential services as local governments struggle to literally do more with less.

STAR Administration Reimbursement
(Revenue Part PP)

The STAR Program is a state program that is ultimately administered at the local level by our towns, despite the shift in 2016 from the STAR real property tax exemption to a STAR credit administered by the state. Part PP of the Revenue Article VII Bill of the 2019-2020 Executive Budget seeks to prevent STAR fraud and abuse; while a valid pursuit, this legislation requires the assessor to notify the state whenever a person has made a material misstatement on their exemption application. Initially, when STAR was implemented, the state provided aid to local governments to defray the administrative costs; in 1999, the state provided $12 million to municipalities, and in 2004, this amount was reduced to $6 million. This aid 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.

The STAR Program enhancements enacted over the years have had a direct impact on the towns responsible for its administration. As this proposal places an additional administrative burden on towns, we request that the state reinstate its funding to towns to offset the costs of administering the STAR program and its changes.

Revenue and Other Funding Needs

Revenue from Internet Sales Tax, Cannabis and Recycling (Revenue Part G, Part VV, TED Parts F and H)

The Executive Budget includes proposals that generate an increase in local tax revenue; specifically, the sales tax exemption elimination on certain commodities from energy service companies, the marketplace provider sales tax, and additionally, a 2 percent tax on cannabis sales by a wholesaler to a retail dispensary to be distributed to the county within which the retailer is located. The Association of Towns supports providing local governments with additional non-property tax revenue, but there must be a mechanism in place to ensure that the local sales tax revenue generated from these proposals is equitably and reliably distributed to all local governments, rather than leaving the disbursement of the funds to the discretion of the county. While some counties share local sales tax revenues, others do not, depriving towns of this essential benefit despite the numerous services towns provide.

Additionally, the Executive Budget proposes to authorize local governments to impose a fee on paper carryout bags. The Association of Towns supports providing local governments with the option to impose a fee on paper bags as it would further local recycling program objectives. Should the Legislature decide that a fee on plastic bags is warranted, we support using those revenues to support municipal recycling programs. Along these same lines, the Governor is proposing to expand the state's bottle bill to capture a wider variety of bottles subject to the recycling system. We support measures that will ameliorate the pressure on municipal recycling programs on the condition that the funding received from this expansion be directed to Environmental Protection Fund and municipal recycling programs.

Funding for Elections

The Executive Budget proposes numerous amendments to the Election Law to increase voter registration and voter participation, and we believe the state should provide funding for these changes. Election expenses are not just a county issue since they have the option of passing on some costs to towns and cities (see County Law §361-a; Election Law §§ 3-226, 4-136, 4-138; see also Opns St Comp, 2007 No. 2007-2). Therefore, we ask that state funds be allocated to cover the costs associated with implementing and administering these new initiatives.

Justice Court Funding

We encourage the Legislature to increase the fees towns and villages receive for the justice court services they perform for other municipalities and governmental entities. Under General Municipal Law §9-L, towns and villages are reimbursed when they perform services on behalf of another government entity, primarily counties and the state. The current reimbursement rate was set in 1997. Inflation alone necessitates an increase in GML §99-L fees for operational expenses, but also authorizing towns to impose a surcharge on certain traffic fines to neutralize the added expense of funding town prosecutors would enable towns to better fund local court operations.

Municipal Home Rule

Regulation of Motorized Scooters
(TED Part P)

Part P of the TED Article VII Legislation authorizes certain motorized scooters and motorcycles on local roads at local option. The Association of Towns fully supports this legislation, as it grants towns parity with other local governments in allowing them to legislate with regard to highways in their jurisdiction.

Regulation of Single-Use Plastic Bags
(TED Part H)

Additionally, the Executive Budget seeks to eliminate the use of single-use plastic bags provided at stores. With this proposal, the state seeks to preempt local authority regarding fees and other regulations on single-use bags. While this is a critical issue statewide, local governments are in the best position to legislate for its needs. Legislative initiatives to address single-use plastic bags should not preempt local laws or regulations that go beyond the state's proposal.

Cannabis Retail Operations
(Revenue, Part VV)

With respect to the cannabis proposal, in addition to requesting some of the revenue that counties would receive, the Association of Towns would also like the statutory ability to opt out. Under the proposal, any county and cities with a population of 100,000 or more have the ability to prohibit retail dispensaries, growing and wholesale activity within their boundaries. Towns should also have this authority, as cannabis operations will have a direct impact on their communities. There is also no logical reason why certain cities have the ability to opt-out, but towns with comparable or bigger populations do not. It is an artificial distinction that treats towns as second-class, and thus we request to be treated as equals to counties and cities.

Other Budget Issues

Financial Disclosure for Elected Official
(Good Government, Part V)

Although the Association of Towns is a strong proponent of ethics and integrity in local government, we oppose the proposed financial disclosure requirement, in which any elected official making more than $50,000 a year would have to file a form annually with JCOPE. First, the proposal is unnecessary and undermines home rule. Towns with populations of more than 50,000 are already required to file a financial disclosure statement with their local ethics board, and towns with a population of less than 50,000 have the ability to impose their own disclosure requirements (*see* General Municipal Law §§ 811; 812). Thus, not only is the proposal redundant, but the Legislature already concluded that personal fiscal monitoring is best kept at the local level. A state agency, like JCOPE, is unlikely to have the resources available to investigate allegations of financial misconduct for nearly every municipality in the state or be aware of what a local ethics code says with respect to personal finances and conflicts of interest. In addition, we are concerned that the proposal would dissuade people from running for public office. The proposal applies to any elected official reaching the income threshold, regardless of whether the position actually has any element of fiscal control. For example, a town clerk without the authority to enter into contracts nor any control over the budget, would have to list any income in excess of $1,000 for his or her spouse. This level of detailed disclosure could certainly deter people from running for office, especially when budget and finance does not relate to the position. The governments closest to the people are in the best position to evaluate their communities and the level of financial disclosure necessary to uphold the integrity of their officials; therefore, we urge the Legislature to reject this proposal.

Interest Rates on Judgments
(PPGG, Part D)

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. Under the current system, judgments and claims interest accrues 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. Tying interest rates to the one-year U.S. Treasury bill rate is also on par with federal practice. Thus, the adopting this proposal is a matter of equity and would reduce costs for local governments.

MWBE
(TED Part AA)

The Executive Budget proposal to extend the state's minority- and women-owned business requirements to local governments that receive any appropriation from the state is a laudable policy; however, we have some concerns about the legislation and therefore cannot support it. Specifically, we believe that goals that are set for the entire state will be nearly impossible to meet in some areas, and that the reporting requirements included in the legislation would increase costs. Towns may already create and incorporate local MWBE goals through best value purchasing laws or designating MWBE coordinators, and we believe setting local goals is a more cost-efficient and practical way to foster equality in the marketplace.

Environmental Protection Fund

The state provides funding assistance to local governments through the Environmental Protection Fund, which the Executive Budget again proposes to fund at $300 million, $14 million of which is allocated to fund municipal recycling programs. The funding currently proposed for municipal recycling is less than what is needed to weather the current changes in the global recycling market. We support the allocation of funds derived from the expanded bottle bill toward municipal recycling programs and the EPF generally.

Funding for Forest Rangers

State forest rangers provide policing, firefighting and first responder services for everyone living in, working in and visiting our beautiful state forests. There are 134 state forest rangers responsible for millions of acres throughout New York State, including the Adirondack and Catskill parks. By contrast, there are 330 rangers assigned to Yellowstone National Park, which is considerably smaller is size. Our state parks are beautiful and attract tens of thousands of visitors annually, all of whom are serviced by forest rangers. Search and rescue operations occur on a daily basis. Although the state is filling vacancies, it does not appear to be increasing the number of rangers. If you can find the resources, our state forests would certainly benefit from increased attention and protection.

Climate Action Council
(TED Part X)

The Association of Towns firmly believes that local governments should be included in the steps to address climate change. The Executive Budget creates a Climate Action Council to address greenhouse gas emissions that fails to include local governments. This is a particularly glaring omission, as local economies and communities will be shaped and impacted by the recommendations of this proposed panel and can provide valuable insight to potential solutions. We strongly urge the Legislature to give local governments a seat at the table when it comes to this monumental issue.

Cemetery reforms

Cemetery abandonment and maintenance are major, costly issues for towns. When cemetery corporations can no longer function or fund their operations, they can legally abandon their responsibilities to the town where the cemetery is located (*see* Town Law § 291). The average cost to town taxpayers to maintain an abandoned cemetery is $2,500 per acre, and the expense to maintain an abandoned mausoleum or crematorium is considerably more. When you consider that there are approximately 1,800 regulated not-for-profit cemeteries in New York, most of which are underfunded, it's easy to see that the $2 million earmarked for issues associated with cemetery abandonment is a only a small step in the right direction. Last year, legislation to amend the cemetery abandonment process and provide towns with additional authority to apply for state funding assistance was approved by the Legislature (see A10515/S7835-A [2018]) but vetoed by the Governor, who said that because the legislation included a fiscal impact, the reform should be addressed as part of the budget (see Veto Memo 295). Accordingly, we encourage the Legislature to include the provisions of A10515/S7835-A (2018) in the SFY 2020 budget to help ameliorate the problem cemetery abandonment presents to towns.

Closing

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 to restore and increase AIM funding for all towns and villages, improving our roads through increased CHIPS funding and improving our health and environment through enhanced funding for clean drinking water and recycling. We are confident that with strong leadership and courageous decisions now, our state will be well on its way to being, to borrow a sentiment from Theodore Roosevelt, a great place for **all** New Yorkers to live.