



Service and Representation for Town Governments of New York State

February 10, 2020

PUBLIC HEARING
on the
2020-2021 Executive Budget

Presented to the
Senate Finance Committee
and
Assembly Ways and Means Committee

Hearing Room B, Legislative Office Building

Presented by

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Greeting and Preliminary Statement

Good afternoon, the Association of Towns (AOT) is 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, a statewide membership organization that provides legal and technical training to town officials. I am here to discuss the 2020-2021 Executive Budget and its impacts on town budgets and services. We are very mindful of the difficulties facing the Legislature with this year's budget, and therefore, our funding asks are limited. Instead, we would like to focus on policy initiatives in the Executive Budget, how they impact towns, and what we believe can be done differently for the benefit of all. We believe state policy and funding initiatives are best developed through collaborative efforts, and we thank you for seeking out the local government perspective as you carry out this process.

Towns – Representing the Diversity of New York

New York is a remarkably diverse state, and nowhere is that better reflected than in town government. There are 933 towns in New York that represent approximately 9 million residents, almost half of the state's population. Hempstead, which has approximately 800,000 residents, operates as a dense urban center whereas Red House, with a population of 34, embodies the rural element of New York. As an organization representing towns both big and small, urban and rural, and elected officials that run the political gamut, AOT is acutely aware that a one-size-fits-all approach simply doesn't work or accurately reflect New Yorkers. Our positions are crafted with a view toward creating solutions that work statewide for all of our membership.

Proposals Imposing on Town's Home Rule Authority

Home rule authority, granted to towns in the New York State Constitution and implemented through the Municipal Home Rule Law, is meant to give local governments control over their own property, affairs, and administrative choices. While there are different levels of local government in New York, each is granted home rule authority and are meant to exercise autonomy over local issues. Unfortunately, several proposals in the Executive Budget infringe on towns' home rule authority. Specifically, the legislative proposals involving cannabis, electronic scooters and bicycles, siting of small cell wireless facilities, and court restructuring all fail to recognize that towns have the right to govern local affairs. Further, the cannabis, electronic scooter and bicycle and court restructuring legislation all inexplicably give counties authority over town issues, whereas the proposal on small cell wireless facilities truncates town government authority to benefit the telecommunications industry. AOT cannot abide by the continued subversion of local government authority, nor do we believe that it is in the public's best interest.

- **Cannabis (Revenue Part BB)**

The Association of Towns, while not taking a position on the legalization of adult-use recreational cannabis, believes that amendments to the proposal in the Executive Budget are needed in order to gain the support of town governments. Namely, towns must have the ability to opt-out of allowing cannabis operations within their jurisdiction, and a portion of revenue from cannabis sales must be directed to towns too. This is not only a matter of home rule; we believe these changes are essential to the success of New York's transition to legalizing recreational cannabis.

Local Option and Input

First, as the form of government closest to the people – and as an entity whose services will be needed for a successful and robust implementation and follow-through – towns should have a say over whether cannabis operations will be allowed within their jurisdiction. As the proposal currently reads, only counties and cities with populations of over 100,000 would have the ability to opt out. If population were truly the metric by which the Legislature would grant the ability to opt out, we note that there are several towns in the state with population exceeding 100,000, and thus, the government class constraint seems artificial.

However, regardless of population, towns in New York should still have the ability to opt out. Should cannabis become legal, town resources will be used, and town officials are in the best position to determine if the town has the capacity to take on these additional responsibilities and whether the taxpayers they represent would support diverting town resources toward cannabis operations.

For example, some towns provide police services, others contract with the county sheriff for an added level of service, whereas others still have determined that the base level of protection offered by the county sheriff's department is sufficient. Cannabis operations in town could necessitate an increase in police service with additional hires, overtime and/or amendments to existing contracts for more services or new contracts with the county sheriff. All of that will be funded out of the town budget (and thus by town taxpayers), yet the Executive Budget renders the voice of towns and residents silent by failing to provide towns with the opportunity to opt-out.

Alternatively, a county may decide to opt-out, thereby leaving those communities who welcome cannabis operations with no recourse, which is equally unacceptable. Municipalities within the same county are diverse and have different needs and wants, even with respect to cannabis. A January 2020 voter survey conducted by Siena College indicated that voters statewide supported legalizing cannabis 58 percent to 38 percent; however, when breaking down demographics further, a slight majority of suburban voters actually oppose legalization, with 44 percent in support and 48 percent opposed (see Nick Reisman, *Voters Back Marijuana Legalization, but Suburbs Remain Split*, Spectrum News State of Politics, originally published Jan. 21, 2020, available at <https://nystateofpolitics.com/state-of-politics/new-york/ny-state-of-politics/2020/01/21/voters-back-marijuana-legalization--but-suburbs-remain-split>). If the state is motivated to move forward with legalized cannabis, it must recognize the varying needs and wants of New York's extremely diverse municipalities and that taking a one-size-fits-all approach on a countywide basis fails to provide the flexibility necessary for this program to be successful.

Sales Revenue Distribution

To account for the fact that town resources would be instrumental for the successful implementation and operation of legalized cannabis in New York State, a portion of sales tax

revenue should be provided to those towns that allow cannabis operations within their jurisdiction. The Executive Budget proposal directly acknowledges public safety as it pertains to legalized cannabis and vests the cannabis control board with the authority to create rules and regulations to prevent cannabis activity from being a cover for trafficking illegal drugs, drugged driving and other adverse public health and safety concerns legalized cannabis would bring. The proposed legislation emphasizes public safety and expressly says that it is the policy of the state to properly protect the public health, safety and welfare of the community. Executing this policy means not only funding social justice programs, substance abuse treatment, prevention and education but also funding police services, fire protection, code enforcement and ambulance services. This means directing a portion of cannabis sales tax revenue to the ones who provide these services – towns. In the states that have legalized recreational cannabis sales, 70 percent share some portion of retail sales revenue with town-level local governments. The best way for the state to protect the health, safety and welfare of the community, will be to statutorily support the funding of local government services.

- **Small Cell Wireless Facilities (TED Part BB)**

The Executive Budget proposal on small cell wireless facility siting in municipal rights-of-way steamrolls over local governments' authority over municipally owned property all to the telecommunications industry's benefit. Part BB incorporates many elements from the September 2018 FCC order that is currently being litigated in the 9th Circuit as violating federal law. Among other things, under this proposal, if a carrier were to rent space in a municipal right-of-way to install a pole to support small cell wireless infrastructure, a town would not be allowed to charge more than \$20 a year. The proposal also caps how much a municipality may charge for application fees and limits the fees that may be imposed when a carrier collocates equipment on a municipal pole in a municipal right-of-way. Essentially, this legislation expects property taxpayers to subsidize the multibillion dollar telecommunications industry through undervalued rents (rates) and application fees. This is wildly incompatible with the state's oft-referenced goal of reducing property taxes under the state-mandated tax cap. The proposal would also do things like limit a town's ability to impose design standards on small cell wireless facilities, which eviscerates any ability to make sure that this new infrastructure fits the character of the community.

This proposal goes even further than the FCC order in favor of the telecommunications industry. For example, the Executive Budget legislation includes a provision wherein applications are approved by default if a decision is not rendered within 60 days. Even the FCC has argued that a default approval provision is unnecessary and that carriers have sufficient other options for regulatory recourse (see Brief for Respondents pages 108-113, *Sprint Corporation v Federal Communications Commission and United States of America*, Court of Appeals for the Ninth Circuit, filed August 8, 2019, available at <https://www.bloomberglaw.com/public/desktop/document/CityofEugeneOregonetalvFCCetal/2?1580936872>).

Local governments want to work with the telecommunications industry to bring broadband, cellular and 5G technology to all communities in New York, but it is not a partnership when one side dictates all the terms. The goal of any program involving local rights-of-way access and management should be to support local governments (read: New York residents) first and industry and utilities second.

- **Electronic Scooters and Bicycles (TED Parts ZZ & AAA)**

The proposal on electronic scooters and bicycles must be modified so that towns have the authority to allow them within their jurisdiction regardless of county action. Parts ZZ and AAA of the TED Article VII Legislation authorizes electronic scooters and electronic bicycles on municipal roadways with speed limits of 30 or below and grants municipalities the ability to further regulate or prohibit electronic scooters and bicycles within their jurisdiction. The Association of Towns supports this part of the legislation, as it grants towns parity with other local governments in allowing them to legislate with regard to highways in their locality. We believe this proposal could be even stronger if it were modified to provide language that gives towns the authority to opt in to authorizing electronic bicycles and scooters in the event that the county in which the town is located opts out. In fact, we believe that the authority to opt out is entirely misplaced with counties because as electronic vehicles and bicycles may only be used on roads with a posted speed limit of 30 miles per hour, they will primarily be used on town, city and village highways, as opposed to county highways. Additionally, towns, rather than counties, would be primarily in charge of enforcing and adjudicating electronic bicycle and scooter regulations, and as such, should be granted the authority to opt in even if the county decided to opt out. Finally, given that towns will be responsible for enforcing rules related to e-scooters and bicycles fines associated with violations should be directed toward towns or a surcharge should be placed on rentals that go toward local governments. If the state wants to support electronic bicycles and scooters in the state, then it should also create a vehicle to fund their administration and enforcement.

- **Court Restructuring**

AOT opposes the court restructuring proposal in the Executive Budget, specifically the creation of municipal courts outside of New York City. Although the proposal states that it will not impact justice courts, we view district municipal courts as a step toward eliminating justice courts entirely and stripping towns of their authority, which would be a significant impact to justice courts; therefore, we cannot support this initiative.

Under the proposal, the county legislative body may ask the Legislature to create a municipal district for the entire county, for two or more contiguous towns, or for two or more contiguous towns and cities. These district municipal courts would have the same jurisdiction town justice courts have, as well as additional authority. Legislation creating a district municipal court would be put to a referendum and only voted on by those living in the proposed district. The Legislature already has the authority to adopt legislation abolishing a town justice court, also subject to a mandatory referendum. Presumably, when creating a district municipal court, the Legislature would simultaneously adopt legislation abolishing the town justice courts in the district because they would be redundant. If the court restructuring proposal is truly not meant to impact justice courts, municipal courts should not have authority over matters currently covered by justice courts.

AOT believes the proposed changes are contrary to the public's interest as they set the foundation to eliminate the courts closest to the people. Town justice courts provide essential functions in communities and make court services accessible and convenient. For the indigent and those lacking reliable transportation, it is much easier to appear in a court mere miles from your home than it is to get across the county. Similarly, someone living in the North Country would undoubtedly rather attend a nearby local court rather than drive in the dark across country roads in the dead of winter. Our current president is also a longtime Town of Rye justice, so we are no strangers to the important work and leadership role town justices provide to a town. There is something to be said for fairly judging the neighbor you may run into at the corner market; town justices ensure the cases before them are carried out swiftly and accurately in the name of justice.

We have further objections to the process by which municipal district courts can be created. Giving counties the authority to request establishing district municipal courts completely bypasses the role of town government, and it violates the basic principles of home rule. Under the proposal, the county legislative body could request that the Legislature create a municipal district court for two or more towns without even seeking the input of the towns affected, and in fact, it could be done over their objection. Nowhere else do counties have such authority over court operations in towns; in every other available means to restructure a town justice court, it is initiated by the town board (see Uniform Justice Court Act § 106-a, 106-b; Town Law § 60-a[2]). We view the fact that towns have no say in establishing municipal district courts as further evidence that the intent is to eventually abolish justice courts altogether, and thus we oppose the court restructuring plan.

Funding Initiatives

- **Local Roads**

AOT is pleased to see that the PAVE-NY and BridgeNY programs have been renewed at \$100 million apiece. However, in order to meet the tremendous need for road repairs, the Legislature must restore Extreme Winter Recovery and increase the CHIPS base.

The state assists towns on just 9 percent of town transportation repairs, and of the \$1.4 billion towns spend annually on roads and bridges, just \$130 million comes from CHIPS. Numerous studies and capital plans confirm the need for increased funding, and despite widespread vocal legislative support for more money, CHIPS and Marchiselli have remained flat since 2013. Programs like PAVE-NY and BridgeNY are not intended to supplant increases to the CHIPS base, and the failure to include Extreme Winter Recovery Fund in the Executive Budget illustrates the pitfalls of relying on these types of temporary funding programs. Increasing CHIPS funding will keep New Yorkers safe, help the state's economy, and save taxpayer money. Every \$1 worth of maintenance on roads and bridges put off will end up costing an additional \$4 to \$5 in future repairs, and New York drivers lose, on average, \$2,768 a year because of poor, unsafe roads and bridges and traffic jams (see Pavement Maintenance, by David P. Orr, PE Senior Engineer, Cornell Local Roads Program, March 2006; New York Transportation by the Numbers – Meeting the State's Need for Safe, Smooth and Efficient Mobility, by TRIP, November 2018). It is critical 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 the inclusion of the Extreme Winter Recovery Fund and CHIPS funding increases as you adopt the final budget.

- **Eliminating Video Lottery Terminal Aid (VLT)**

We oppose the proposal to eliminate VLT aid to all local governments except the City of Yonkers (PPGG Part KK). The state provides VLT aid to municipalities that host VLT facilities, 17 of which are towns. The loss of any aid to towns has a significant impact as they try to operate under a tax cap and keep real property taxes down.

Proposals AOT Supports

- **Increasing CHIPS Bidding Threshold (TED Part A)**

AOT wholeheartedly supports increasing the monetary threshold from \$250,000 to \$750,000 before competitive bidding requirements are triggered for CHIPS-funded public works projects. As the law

currently stands, towns are prohibited from using town employees to perform these projects if the estimated cost is more than \$250,000. Raising the threshold will save municipalities money as they will not have to incur the expense and time of putting a project out to bid and are able to use in-house resources.

- **Environmental**

The Executive Budget exhibits a continued dedication to environmental stewardship. We support the following initiatives:

- Amending the Public Authorities Law §1285-j (4) allowing the Environmental Facilities Corporation (EFC) to offer municipalities 40-year financing through the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund for projects that qualify for 0-percent interest rates due to financial hardship (TED Part KK).
- Establishing a \$3 billion Restore Mother Nature Bond Act to address habitat restoration and flood reduction so that towns may receive funds to build flood-resilient infrastructure.
- Adding \$500 million to the Clean Water Infrastructure Act, for a total of a \$3.5 billion investment in drinking water infrastructure and source-water protection actions (Capital Projects Appropriations Bill page 123).
- Funding the Environmental Protection Fund at \$300 million, \$14.75 million of which is allocated to fund municipal recycling programs.

- **Interest Rates on Judgments (PPGG Part T)**

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. The current framework provides that judgments and claims interest accrue 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. While we can see that this legislation was necessary when interest rates were in excess of 9 percent, this protection is no longer necessary in today's economic climate. Tying interest rates to the one-year U.S. Treasury Bill Rate is on par with federal courts and appropriately reflects interest rates for today's markets. Accordingly, adopting this proposal is a matter of equity that would reduce costs for local governments.

- **Countywide Shared Services Plans**

AOT supports the proposal that gives municipalities more flexibility to apply for matching savings grants. Under proposed amendments to General Municipal Law § 239-bb (8), projects in previously approved plans would be eligible for state matching funds when they are implemented; currently, initiatives must be implemented in the year after the plan is approved in order to be eligible. This amendment, particularly in connection with the countywide shared service plans, is a great way for the state to support localities.

Other Issues Important to Towns

- **Prevailing Wage (TED Part FFF)**

We oppose amending the Labor Law to expand prevailing wage requirements to certain private projects and the establishment of a Public Subsidy Board. Under the proposal, prevailing wage would be required for private construction projects when the project costs over \$5 million and at least 30 percent of it is paid by public funds, with certain exceptions. Prevailing wage far exceeds the average market wage and would mean significant increases to the costs of projects; expanding it to certain private contracts will thwart development and projects important to the public because constructions costs will be too high. We believe that policies that create jobs – rather than drive projects from New York – is the best way to support New York’s working men and women.

Furthermore, we vociferously oppose vesting an administrative board with the authority to essentially rewrite the law on prevailing wage. The Executive Budget proposal creates the Public Subsidy Board that has the authority to examine and make binding recommendations on future projects involving public funds. Specifically, it can review and make binding recommendations on the minimum-dollar threshold percentage of public funds, the minimum-dollar threshold of projects, construction work excluded as a covered project, the definition of construction and whether particular benefits, monies or credits constitute public funds. Although the board has the ability to hold public hearings, we believe it is completely contrary to public policy and basic principles of government transparency to give a board comprised of people appointed by the governor the authority to what amounts to rewriting the law on prevailing wage. That task must be left to the courts and Legislature

- **STAR Administration Reimbursement**

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 that, in theory, is administered by the state. In reality, town officials spent significant time and resources in 2019 administering this program, and will continue to do so in 2020. When STAR was initially 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, state funding was reduced to \$6 million before being 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 change.

The STAR Program changes proposed in the 2020-2021 Executive Budget prove no different, and in fact, place even more duties on town officials. Specifically, Part O of the Revenue Bill requires the assessor or other town official to notify the state of any property owners with delinquent taxes, as such owners will not qualify for the STAR benefit. Our assessors have indicated that they spend as much as 30 percent of their time devoted to STAR administration; this proposal will undoubtedly require town assessors to spend even more time on this program, with no reimbursement from the state.

Further, the proposed budget reopens the enrollment period into the Income Verification Program for seniors that qualify for the Enhanced STAR Benefit. This policy was first implemented in 2019, and the administration was extremely cumbersome for local assessors and collecting officers. The state provided the assessors with a list of residents that had been removed from the Enhanced STAR and asked them to review the list to see who was entitled to the benefit. Previously, the assessors would have been able to easily make this determination, as all files and changes made were

kept at the local level. For the 2019 collection cycle and now for the proposed 2020 cycle, the state is asking the assessors to review eligibility of residents using information to which now only the state has access (e.g., changes made to a file that the assessor was not made aware of), rendering this task extremely difficult, if not impossible, for town assessors. For collecting officers, many had to adjust tax bills and faced a myriad of questions from distressed seniors that did not realize they had to enroll in the program.

The state has consistently made changes to the STAR Program that proposed to reduce and shift the administrative burden away from towns and onto the state. However, the simple fact is that the changes have only added to the administrative duties of town officials while creating significant confusion amongst taxpayers. We request that the Legislature consult with the Association of Towns to ensure that any changes to the STAR Program function to reduce confusion for taxpayers and either provide town officials with the required information to properly administer the program, or alternatively, actually – as opposed to in theory – shift the program to a true, state-administered program. Additionally, as a significant amount of time is spent at the town level administering this state program, we request that Legislature reinstate state funding to towns to offset the costs of administering the STAR Program and its changes.

- **Freshwater Wetlands Regulatory Program**

The Executive Budget proposes amendments to the Environmental Conservation Law regarding the regulation of freshwater wetlands (TED Part TT). In addition to other changes, the proposed amendments would change the manners in which freshwater wetlands are mapped and permit fees are set. Currently, freshwater wetland mapping requires the Department of Environmental Conservation (DEC) to undertake a regulatory process, with specific notifications, public hearings and public commenting requirements. The governor is proposing to eliminate the need to undertake a regulatory process to change, update or modify the state's freshwater wetland maps. Instead, the DEC commissioner would be allowed to make changes at any time to more accurately depict the location of wetlands. Permits to work in or near a freshwater wetland would no longer be linked to the map, with the map serving as an educational tool instead. As development in towns and highway issues are impacted in areas considered a freshwater wetland, we ask that towns be given an opportunity to provide input on proposed changes to wetland maps and that the process offer towns enough notification to prepare for any changes.

Conclusion

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 during this budget and legislative session.