



**New York State Joint Legislative Budget Hearing on Transportation
February 6, 2023**

**TESTIMONY OF WALTER PACHOLCZAK
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Chairs Krueger, Weinstein, Kennedy and Magnarelli, and members of the Legislature, on behalf of the Associated General Contractors of New York State (AGC NYS), I thank you for holding this important public hearing to discuss the proposed fiscal year 2024 Executive Budget and transportation.

AGC NYS is New York's leading statewide construction industry association of union and open shop contractors, that build New York's transportation, heavy highway, civil, environmental, public, and private building infrastructure. We represent nearly 600 contractor, subcontractor, and related firms and as an association have more than 80 years of experience working with public agencies and private developers to deliver quality projects that are the lifeblood of our communities. More than just builders, our members are proud stewards of New York's public and private built infrastructure.

Today's testimony will focus on the impacts of the Executive Budget proposal on the New York State Department of Transportation (NYSDOT), Metropolitan Transportation Authority (MTA), Gateway Hudson Tunnel Project, New York State Thruway Authority, construction materials inflation, and related Article VII legislative proposals.

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Capital Programs

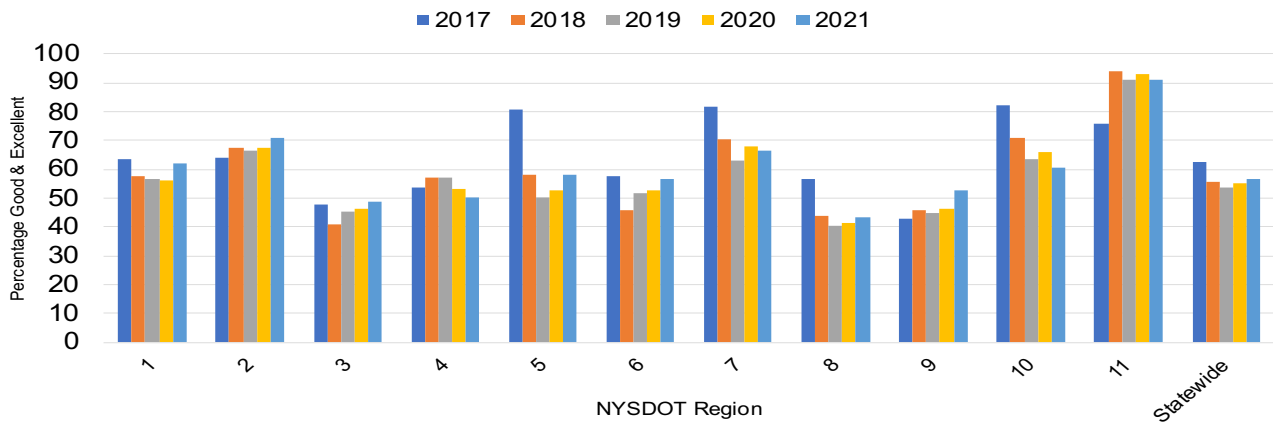
New York State Department of Transportation

The FY 2024 Executive Budget reflects the second year of a \$32.8 billion, five-year New York State Department of Transportation (NYSDOT) Capital Plan to support the State’s roads, bridges, airports, rail facilities, ports, and other transit systems. The NYSDOT Capital Plan provides almost \$7 billion in FY 2024 and includes funding from both State and Federal resources.

For FY 2024, the Capital Plan includes funding of \$578 million for the CHIPS and Marchiselli local highway and bridge programs; \$100 million for Extreme Winter Recovery; \$100 million for State Touring Routes; \$45 million for freight and passenger rail; and \$27 million for aviation. The Capital Plan also commits \$150 million in local highway aid through the PAVE NY program and includes an additional \$200 million to fund Pave Our Potholes, a State and local program that commits \$1 billion over the five-year plan. The Capital Plan also includes \$200 million to fund local bridge projects from the BRIDGE NY program as part of a \$1 billion total commitment over the five-year plan.

AGC NYS Comments - NYSDOT Capital: AGC NYS continues to be particularly concerned that funding levels for the NYSDOT Capital Program do not meet the needs of the system, with nearly half our roads in fair or poor condition and with one of the highest percentages of deficient bridges in the nation. Furthermore, the current NYSDOT Capital Plan does not realize the full potential of the historic federal infrastructure bill, having grown in FY23 by less than half the amount of increased funding Senator Schumer and the Congressional Delegation delivered for New York in that landmark legislation. Inflation and materials cost escalation have more than consumed that increase and putting real spending on our roads and bridges at 2015 levels.

2017 – 2021 Pavement Conditions



Source: NYSDOT

Due to the lack of investment from 2016 thru 2019 the state's pavements saw their largest decline in three decades. As a result, in 2021 16,653 (43.2%) lanes miles were still classified as fair/poor. These higher levels of pavement investments need to be sustained throughout the current five-year capital program. Even at current funding levels six of NYSDOT's 11 regions saw declines in pavement conditions.

While the current NYSDOT five-year capital program provides a strong base, the adopted capital program will need additional funding each year to stop the further deterioration of the state's highways and bridges. The current program provides \$4.15B for eight Priority/Signature projects around the state—projects including Buffalo's Kensington Expressway, I81 in Syracuse, Route 17 in the lower Hudson Valley and Hunts Point in New York City. As enacted, the five-year capital program provides almost no funding for these Priority/Signature projects in its last two years. It is projected an additional \$1.4B - \$2.2B in funding will have to be added to the current program to complete these projects or construction of these projects will be halted in 2024. Additionally, the lack of adequate funding for the Priority/Signature projects is forcing NYSDOT to shift funds originally intended for core projects.

AGC NYS will be working with our infrastructure coalition partners, Governor Hochul, and the Legislature to increase the NYSDOT capital program by \$1.128B. AGC NYS' partners include 40 organizations from the construction industry, business, organized labor, local governments, and minority and women-owned businesses. In a January 2023 letter to Governor Hochul and legislators, the coalition acknowledged that in the enacted FY23 New York State Budget included the first fully funded NYSDOT five-year capital program in nearly a dozen years. but added that without an additional \$1.128B of funding added to the NYSDOT's FY24 core program, we will see significant reductions in the maintenance and reconstruction work done in every NYSDOT Region in the state. As you prepare the FY24 Executive Budget, AGC NYS strongly urges you to consider adding \$1.128B to the NYSDOT core and local highway capital budgets.

The coalition letter cited the December 2022 signing by President Biden of the \$1.7T Transportation, Housing and Urban Development bill. The \$1.7T federal fiscal year 2023 spending bill includes provisions that authorize state, local, and tribal governments to use portions of their federal COVID-19 relief aid for infrastructure projects. Under the amendment, now an eligible entity may use up to 30 percent of its American Rescue Plan Act (ARPA) relief funding on eligible highway or public transportation infrastructure projects. Based on Comptroller DiNapoli's COVID-19 Relief Program Tracker, New York has directly received \$13.6B in ARPA funds and, through November 30, 2022, it had spent only \$5.3B.

The current, significant erosion of the capital program as a result of inflation and material cost escalation—and the pressure Priority/Signature projects are putting on investment in the core—calls for the state to add \$1.128B to the NYSDOT capital program. From 2020 to 2022, NYSDOT price adjustment rose for the following categories: fuel 256%, asphalt 77.5% and steel 115%. The following chart demonstrates transportation capital obligations with an inflation adjustment.

TRANSPORTATION CAPITAL OBLIGATIONS W/ INFLATION ADJUSTMENT

NYS DOT Capital Program (in Million \$s)	SFY Enacted 2020-21	SFY Enacted 2021-22	SFY Enacted 2022-23	SFY Proposed 2023-24	* Inflation Reduction 2022-23	• Inflation Reduction 2023-24	Inflation Adjustment 2023-24
State/Local Construction	\$2,571	\$2,340	\$2,575	\$2,599	\$2,139.8	\$2,027.22	\$3,170.78
Signature	\$1,030	\$1,410	\$850	\$1,300	\$706.35	\$1,014	\$1,586
State/Local Construction/Signature	\$3,601	\$3,750	\$3,425	\$3,899	\$2,846.15	\$3,041.44	\$4,756.78
Engineering/Administration	\$994	\$732	\$1,039	\$1,041	-	-	-
Preventative Maintenance	\$360	\$360	\$391	\$391	-	-	-
Right of Way	\$37	\$67	\$75	\$75	-	-	-
Facilities/Equipment	\$32	\$32	\$37	\$37	-	-	-
Other Federal	\$25	\$25	\$26	\$26	-	-	-
Rail	\$72	\$72	\$90	\$90	-	-	-
Aviation	\$17	\$17	\$27	\$27	-	-	-
Non-MTA Transit	\$125	\$85	\$160	\$160	-	-	-
CHIPS/Marchiselli	\$477.8	\$577.8	\$577.8	\$577.8	\$480.15	\$450.68	\$778.8
Local PAVE-NY	\$100	\$150	\$150	\$150	\$124.65	\$117	\$150
Local POP	-	-	\$100	\$100	\$83.10	\$78	\$100
EWR	\$65	\$100	\$100	\$100	\$83.10	\$78	\$170.1
Local BRIDGE-NY	\$100	\$100	\$200	\$200	\$166.20	\$156	\$200
Local State Touring Routes Program	-	\$100	\$100	\$100	\$83.10	\$78	\$100
Airport Program	\$100	-	\$150	\$0	-	-	-
NYS DOT Plan Total	\$6,106	\$6,168	\$6,648	\$6,974	-	-	-
State/Local Construction Total	-	-	\$4,652.8	\$5,126.8	\$3,866.43	\$3,998.9	\$6,254.70

* The U.S. Bureau of Labor Statistics posts a producer price index for Inputs to highways and streets, excluding capital investment, labor and imports—the index value increased by 16.9% from 2021 to 2022. For 2023, it is projected to increase by 5.1% or 22% combined for 2022-2023.

Source: NYSDOT, Associated General Contractors of America

Metropolitan Transportation Authority

The Metropolitan Transportation Authority (MTA) \$52.1 billion 2020-2024 Capital Program represents the largest investment in MTA infrastructure in State history. The program prioritizes improvements to signal technology, increases accessibility, addresses quality of life concerns, invests in LIRR and Metro North Railroad, and upgrades bus service. To accompany this investment, the State enacted key reforms and dedicated funding streams for the MTA. The State secured \$25 billion in financing to directly support the MTA’s 2020-24 Capital Program, consisting of \$15 billion from the Central Business District Tolling Program (CBDTP) and \$10 billion from other tax sources.

AGC NYS Comments – MTA: AGC NYS commends the leadership of MTA Chair and CEO Janno Lieber and his team to get the authority back on track. A new steady and dedicated revenue stream is a recurring problem for the MTA capital program. With the CBDTP on hold, the FY24 Executive Budget proposes new taxes on businesses and casino fees to help fund current and new construction projects. In addition to the new funding streams, AGC NYS encourages the Governor and Legislators to find new efficiencies to reduce capital costs at the MTA such as reforming New York’s scaffold law. The scaffold law is a key cost driver of the MTAs owner-controlled insurance program.

Gateway Hudson Tunnel Project

The FY 2024 Executive Budget increases the authorization enacted last year to reflect increased project costs. The Executive Budget includes the resources that are expected to be needed to make annual payments to fund the State’s commitment for the Gateway Hudson Tunnel Project starting as early as FY 2024. The Gateway Hudson Tunnel Project consists of three elements: (i) a new two-track tunnel under the Hudson River between New York

and New Jersey; (ii) the Hudson Yards Concrete Casing; and (iii) the rehabilitation of the existing Amtrak North River Tunnel under the Hudson River between New York and New Jersey. Funding for the Hudson Tunnel Project is expected to be split equally between the Federal government (50 percent) and the local sponsors (50 percent), consistent with a 2015 framework agreement among the Federal government, the PANYNJ, New York State and the State of New Jersey. The October 2022 financial plan for the Gateway Hudson Tunnel Project increased the estimated total project cost to \$16.1 billion, with the local funding commitment for construction costs totaling \$8.0 billion, or 50 percent, allocated among the State of New Jersey, State of New York and the PANYNJ. New York State's capital commitment for Hudson Tunnel Project is expected to be funded with a USDOT RRIF loan obtained by the GDC, a bi-state public authority. The State expects to make annual payments to the GDC equal to the principal and interest on the RRIF loan as the same shall become due. Such payments are subject to annual appropriation by the State Legislature. The State has no plans to issue State-supported debt to fund its annual payment obligation to GDC. The maximum annual payments on the RRIF loan are not expected to exceed \$175 million when fully annualized. Such payments are expected to be substantially lower during the construction period, with the initial payments beginning as early as FY 2024, consistent with the terms of the RRIF loan. The following table shows the costs to repay the RRIF annual loan payments as estimated in the October 2022 financial plan.

AGC NYS Comments - Gateway Hudson Tunnel Project: AGC NYS strongly supports federal and state funding for the Gateway Hudson Tunnel Project.

New York State Thruway Authority

The New York State Thruway (Thruway) is currently about 570 total miles in length and has 134 interchanges. Thruway pavements are typically nine inches of reinforced Portland cement concrete placed on 12 inches of granular subbase. Shoulders are made up of treated granular material with asphaltic wearing surface. A large portion of the roadway's base dates back to its original construction, highlighting the need for heavy maintenance, reconstruction, and rehabilitation activities to retain the riding surface in a state of good repair.

The Authority has maintenance and inspection responsibility for 816 bridges that carry Thruway traffic as well as local roads and State highways over the Thruway System. As with the roadway, an overwhelming majority of the structures date back to the original opening of the Thruway System in the 1950s and require continual and significant repair, rehabilitation, and reconstruction investments to prevent deteriorating conditions. More than 85 Thruway bridges are identified for replacement in the next decade with hundreds of bridges that will require replacement not long thereafter.

AGC NYS Comments: AGC NYS supports the toll adjustment approved by the Thruway Board of Directors. It is a necessary first step toward meeting the long-term needs of this aging system, on which 75% of its bridges are more than 60 years old and 85% of its roadway still sits on the original surface. But to be clear, this increase is nowhere near sufficient to fully meet the need to reconstruct the Thruway. Additional toll revenue will be necessary in the future—and we also believe the Authority should be seeking to index its tolls.

The Thruway is a user-fee supported roadway and does not receive federal, state, or local tax dollars. The last toll adjustment was in 2010. Since 2010, costs have dramatically increased due to inflation, and priority projects such

as the Governor Mario M. Cuomo and cashless tolling. It has among the lowest tolls of any toll system in the region and across the country.

We also encourage the Legislature to consider additional actions, such as the transfer of the cost of New York State Police Troop T from the Thruway Authority to the General Fund to provide additional fiscal relief to the Authority.

Article VII

Part E – Expand MTA Owner Controlled Insurance Program

This bill would allow the Metropolitan Transportation Authority (MTA) to expand its Owner Controlled Insurance Program (OCIP) and reduce the cost of capital programs. Current law authorizes insurance coverage through an OCIP for a limited set of projects, including projects related to the construction and extension of railroads. This bill would authorize the MTA to expand the program to capital projects related to buses, bridges, and tunnels.

AGC NYS Comments: Since insurance costs are a major driver of the MTA capital program, reforming the scaffold law would provide the system with much needed fiscal relief. AGC NYS questions whether this proposal will result in lower or higher insurance costs for the MTA? Furthermore, OCIPs are not beneficial to smaller contractors and subcontractors like minority and women owned businesses because they are not gaining the experience of purchasing insurance on the open market.

Part F – Toll Violation Enforcement

This bill would improve toll collection efforts by the Metropolitan Transportation Authority, Triborough Bridge and Tunnel Authority, and other tolling authorities, by outlawing certain common toll evasion practices and strengthening enforcement actions and penalties to respond to such practices.

AGC NYS Comments: Support

Part H – Transportation Worker Assault Prevention

This bill would provide that attacks causing physical injury against traffic checkers, motor vehicle license examiners, motor vehicle representatives, highway workers, motor carrier investigators, and motor vehicle inspectors, constitute assault in the second degree.

AGC NYS Comments: The construction industry is a dangerous occupation. Nationwide, construction comprises 6% of the workforce yet construction workers account for 20% of all workplace fatalities. Work zone fatalities continue to be one of the leading causes of construction related fatalities. The numbers are staggering and raise red flags about the need for stringent laws to curb the public from speeding through work zones. According to New York State Department of Transportation in 2021, there were 378 work zone intrusions on State and Thruway Corridors resulting in more than 50 injuries to both workers and the traveling public. Since 2017, eight construction/transportation workers have lost their lives due to traffic accidents in the work zone. According to the New York State Troopers, in 2021 37% of the tickets issued during operation hard hat were due to excessive

speed-those tickets averaging 83 miles per hour inside the work zone limits. AGC NYS strongly supports protecting highway workers from attacks causing physical injury.

Part Q – Increase the Top Metropolitan Commuter Transportation Mobility Tax Rate

This bill would increase the top Metropolitan Commuter Transportation Mobility Tax (“MCTMT”) rate from 0.34% to 0.50%.

AGC NYS Comments: The inclusion of this proposal may indicate that CBDTP has hurdles to overcome.

Part R – Providing Financial Relief to the Metropolitan Transportation Authority

This bill would dedicate revenue from certain casino fees and taxes to the Metropolitan Transportation Authority (MTA).

AGC NYS Comments: The inclusion of this proposal may indicate that CBDTP has hurdles to overcome.

Conclusion

Thank you for the opportunity to testify at today’s public hearing. We look forward to further review of the Executive Budget and Legislative Budget Resolutions, as well as, engaging our elected officials and partners to ensure that a budget that meets New York’s transportation infrastructure needs, creates jobs, and drives our economic recovery is enacted. I welcome all questions from the committee.

