



ASSOCIATION OF TOWNS OF THE STATE OF NEW YORK

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Public Hearing on the 2022-2023 Executive Budget

before the

THE NEW YORK STATE SENATE FINANCE COMMITTEE AND
ASSEMBLY WAYS & MEANS COMMITTEE

Comments Submitted by the Association of Towns of the State of New York

Presented by Gerry Geist - Executive Director, Association of Towns

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 2022-2023 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 local government perspective as you carry out the state budget process.

A New Phase for Local Governments in New York

2021 did not unfold the way anyone expected. The COVID-19 Delta and omicron variants disrupted the everyday lives of individuals around the state, but throughout it all, local governments rose to the challenge, adapted when needed, and continued to provide services to protect the health, safety, and welfare of the 9 million residents who call one of the state's 933 towns home. Over the years, we've found that some who are not as familiar with town operations labor under the misapprehension that towns are relatively small entities with mundane, administrative-type responsibilities. Nothing could be further from the truth. Towns create policy and provide essential services that significantly impact their residents. Most towns provide water and sewer services, which is particularly important considering the recent amendment to the New York State Constitution guaranteeing clean water as a right; we provide and contract for emergency services; manage highway maintenance – a critical function for a thriving economy; legislate and enforce land use, and much more. Though the challenges faced by towns in Long Island may differ from those faced in Western New York or in the North Country, the dedication town officials have in serving their community remains the same and having sufficient funds is a critical component of that. All but a few towns received American Rescue Plan Act funds this year, which was a welcome and much needed form of financial relief from the federal government, but one-time cash infusions are not enough to sustain critical functions. Although real property sales tax is the primary source of funding for town services, we also look to the state to partner with on various issues of shared importance, like maintaining transportation infrastructure, and a willingness to work together.

Governor Hochul's Executive Budget is, by far, the most favorable one to local governments in years; her words about working with local governments were not empty, and her budget shows she understands the important roles the government closest to the people play. It is a refreshing approach and represents a new chapter in the relationship between the state and local governments. We hope the Legislature agrees and look forward to a successful budget season.

AIM Funding (PPGG Part X)

AOT is extremely pleased to see the proposal in the Executive Budget that returns the Aid and Incentives to Municipalities Program (AIM) to a state-funded one, thus ending the practice of intercepting county sales tax to fund AIM payments for 92 percent of towns. AOT vehemently opposed the county sales tax intercept when it was introduced in 2019, and continued to do so not only because it ran completely contrary to the AIM Program's stated goal of reducing real property taxes and equated to taking money from one hand to pay another, it also signified a disintegrating relationship between the state and local governments. We believe that returning AIM to a state-run general revenue sharing program indicates a renewed partnership where the state and local governments can work in concert to provide the best services to New Yorkers. Therefore, we strongly recommend that this proposal be included in the final budget.

LOCAL GOVERNMENTS OWN 85 PERCENT OF ALL ROADS IN THE STATE, WITH TOWNS MAINTAINING 62.9 PERCENT OF ALL CENTERLINE MILES AND SPENDING \$771 MILLION IN 2020 ON HIGHWAY MAINTENANCE, THE MOST OUT OF ANY FORM OF LOCAL GOVERNMENT.

AOT does have one additional request with respect to AIM – that it be increased by 2 percent. AIM has not been increased since 2009, and given the rising costs of goods and services, any additional funding towns receive would be put to good use and reduce the likelihood of having to raise real property taxes or override the property tax cap.

Highway Funding

Adequate highway funding plays an essential role in resident safety and fostering a robust economy. To that end, Gov. Hochul's Executive Budget maintains CHIPS and Marchiselli at \$538.1 million and \$39.7 million, respectively; maintains PAVE-NY at \$150 million and Extreme Winter Recovery at \$100 million, and increases BridgeNY by \$100 million for a total of \$200 million. The governor also announced a new Operation Pave our Potholes (POP) Program, with \$100 million in proposed funding for SFY 2022-2023. AOT appreciates that these various programs are funded and included in the Executive Budget; however, we ask that the final budget include an increase to the CHIPS base, which is from our perspective, financially justifiable and reflects common sense.

The need for increased highway funding for local governments is well established. Local governments own 85 percent of all roads in the State, with towns maintaining 62.9% of all centerline miles and spending \$771 million in 2020 on highway maintenance, the

most out of any form of local government (see <https://www.osc.state.ny.us/files/local-government/publications/pdf/locally-owned-roads-by-the-numbers.pdf>). The Office of the State Comptroller very recently cited a study from 2013 indicating that there is a spending gap of \$1.3 billion a year for locally owned roads and bridges, and opines that this gap may have actually increased since local spending has dropped over the decade relative to inflation (see id.). Almost every year, AOT cites the following statistics, but they are worth mentioning again – every dollar worth of maintenance on roads and bridges delayed leads to an additional \$4 to \$5 in future repairs, naturally resulting in higher real property taxes. On top of this, 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).

Although we are thankful for programs like PAVE-NY and BridgeNY, they were never intended to replace increases to the CHIPS base. Steady, reliable funding sources like CHIPS allow towns to engage in long-term capital planning, a practice which the OSC strongly encourages local governments to engage in, and puts local governments in a better position to weather unexpected financial issues like those presented by COVID-19.

Accessory Dwelling Units and Transit-Oriented Development

Some of the only parts in the Executive Budget that the Association of Towns opposes are ELFA Part AA and ELFA Part EE. ELFA Part AA requires towns, cities, villages to adopt legislation allowing accessory dwelling units (ADUs) on every lot with a single-family or multi-dwelling unit and places significant restrictions on what can be included in the local law. ELFA Part EE states that towns, cities, and villages must allow the development of at least 25 dwelling units per acre on any residentially zoned (or un-zoned) land located within one-half mile of covered transportation facilities, which include

- Any New Jersey Transit, MTA, Metro-North, or Port Authority rail station located between one-half mile and 60 miles from New York City;
- Any bus stop or station with designated parking for riders located between one-half mile and 60 miles from New York City; and
- Any Long Island Railroad station not located within New York City.

Municipalities would be required to amend their comprehensive code and land use regulations to conform to this density requirement, and they would not be allowed to enact anything that would effectively prevent such development.

Though AOT supports the policy driving these proposals to increase the availability of affordable housing and understands the role that ADUs and dwelling units near public transport play in both rural and more densely populated communities, we cannot support legislation that overrides local home rule authority on basic land use issues and

have concerns that the proposals in the Executive Budget do not address significant practical issues that arise with any kind of development.

The Importance of Home Rule on Local Land Use Issues

Municipal Home Rule Authority, which allows local governments to govern matters of local concern, recognizes that New York State and its towns, cities, villages, and counties are remarkably diverse and therefore offers legislative flexibility so that local governments may address local issues in ways that work best for the area. The needs in the town of Hempstead with a population of approximately 800,000, for example, differ significantly from the needs in the town of Red House with a population of 38. Even towns that seem relatively similarly situated in terms of population and geography can have substantially different needs given how they have developed over the years. Top-down proposals simply do not work, particularly where residential development is concerned. Instead, one-size-fits-all legislation ends up creating various issues since it does not address the specific and unique needs of a community, the capacity of local government to support such development, or the long-term impacts of such development. As the form of government closest to the people, towns, cities, and villages are in the best position to evaluate these issues, particularly since local resources are largely used to support such development.

Practical Concerns

One of the concerns that AOT has with these proposals is that they fail to take into account – and actually prohibit municipalities from considering – the ability of public services to support the immediate expansion that would result from this legislation. For example, the proposed ADU legislation states that while towns may consider the ability of a *septic* system to support a newly developed ADU, it wholly ignores the impact ADUs would have on municipal water and sewer. In fact, the legislation explicitly states that no conditions or regulations can be imposed on an ADU unless it's for the health, safety, and welfare of the occupant, and therefore, towns are not even allowed to consider the impact an ADU would have on a municipal system. Many towns provide water and sewer systems through special improvement districts that are maintained and operated by the town, and it is well-documented that water and sewer infrastructure is in dire need of repair around the state as many systems are already stressed beyond their limit (see e.g. *Drinking Water Systems in New York, The Challenges of Aging Infrastructure*, Office of the New York State Comptroller, February 2017 available at <https://www.osc.state.ny.us/files/local-government/publications/pdf/drinkingwatersystems.pdf>). To wit, the capacity of existing water and sewer services and the cost of improvements are exactly the types of things that must be evaluated when developing land use regulations. Therefore, when a one-size-fits-all, top-down approach is taken with respect to local development, as in this case, it fundamentally eliminates a municipality's ability to meaningfully monitor and

manage water and sewer services; meanwhile, adding more users to already-overstressed systems creates a significant public health concern.

Furthermore, taking away local authority on basic land use issues undermines local rules and regulations that, while possibly a nuisance or hindrance to an individual goal, were created and exist in the interest of overall public health, safety and welfare. For example, some towns require parking to be considered, or parking spots be built to accommodate new ADUs is not imposed in an attempt to hinder development. Rather, particularly in more densely populated areas, parking already presents a significant challenge, and towns have tried to regulate it in a manner responsive to public needs and safety so individuals are not left walking blocks at night to simply get to and from their car. Other things, like setback requirements, are often established with issues like road sightlines in mind, and proposals like those found in the Executive Budget that prohibit municipalities from imposing setback requirements ignore that fact. Truncating local government authority on the regulation of basic issues is not in the public interest and ignores the fact that rules exist in service to the greater public interest.

Finally, often when the state considers preempting local authority on land use issues, we hear the argument that the issue involves specialized services or equipment and thus is “too complicated” for the local level. While AOT eschews this reasoning, nonetheless it is worth noting that the siting and regulation of residential development is relatively mundane. Towns have regulated residential dwelling units for generations, and they are more than capable of continuing to do so. While there are occasionally complaints that local land use takes too long, even the Executive Budget places a 90-day deadline to issue an ADU permit. The reality is that local governments have a process to which they must adhere. Things like environmental review take time, not just procedurally, but towns must be given the time to thoroughly consider any issues raised.

Stripping local governments of one of their major responsibilities is not the best way to foster ADU development and other affordable housing options. Rather, we encourage the state to take an incentive-based approach and do things like create a dedicated fund for water and sewer improvements so that local governments are better positioned to support affordable housing development.

STRIPPING LOCAL GOVERNMENTS OF ONE OF THEIR MAJOR RESPONSIBILITIES IS NOT THE BEST WAY TO FOSTER ADU DEVELOPMENT AND OTHER AFFORDABLE HOUSING OPTIONS. RATHER, WE ENCOURAGE THE STATE TO TAKE AN INCENTIVE-BASED APPROACH AND DO THINGS LIKE CREATE A DEDICATED FUND FOR WATER AND SEWER IMPROVEMENTS SO THAT LOCAL GOVERNMENTS ARE BETTER POSITIONED TO SUPPORT ADU DEVELOPMENT.

Local Ethics Reform (PPGG Part Q)

The Association of Towns believes that General Municipal Law Article 18, the only state legislation addressing conflicts of interest for local government officials, could be vastly improved. While courts have attempted to fill some of the law's significant shortcomings by creating a whole jurisprudence on common law conflicts of interest, statutory changes are still necessary. We fully support the idea of making changes to local government ethics laws; however, we would like to see a comprehensive reform of Article 18 that not only fills in some of the gaps that exist but also has a practical application. To that end, we propose that the state create a working group to develop recommendations on Article 18 amendments, in which AOT would be eager to participate, as we have a myriad of ideas already. For example, using a term like "nominal" when limiting an officer or employee's ability to accept gifts as proposed in Part G of PPGG creates further ambiguity in a statute that has been deemed by one court as unconstitutionally vague.

Code Enforcement (TED Part VV)

Although AOT has no objection to ensuring that the Uniform Fire Prevention and Building Code and State Energy Conservation Construction Code is properly enforced, we believe the following changes are necessary:

1. Create clear guidelines on what prompts an investigation or designates a municipality as underperforming.

As the proposal is currently written, it is unclear what prompts an investigation into a local government's code enforcement. Does the state receive a certain number of complaints? Will investigations be akin to an audit from the State Comptroller's Office to check up on a municipality's enforcement capabilities and simply performed periodically? We recommend creating an objective metric; for example, one based on the number of resident complaints, be instituted in order to reduce capricious investigations

2. Eliminate the provision allowing counties to investigate local code enforcement performance.

The proposal in the Executive Budget would allow counties to write to the state asking for investigatory authority over another local government's code enforcement performance, and giving counties relative authority over a town function is not something AOT can support. Deleting this provision is particularly important given that it is not clear what spurs an investigation and although local governments work extremely well together most of the time, a construct like this sets the stage for a worst-case scenario of political machinations and power struggles.

3. Create a probationary period so that a municipality can improve on its code enforcement.

Once a municipality's code enforcement efforts are found lacking, it should be given the opportunity to constructively address and fix the issue. Not only is the municipality most familiar with the community it serves, the fact that the proposal allows the state to charge back costs of remediation on the underperforming local government makes this change particularly important.

4. Amend provisions imposing costs on local governments

The legislation allows the state to take various measures to address underperforming municipalities, which includes but is not limited to the option to hire consultants, hire a third party to perform code enforcement, or transfer code enforcement responsibilities to another local government. All of these costs will be charged back to the underperforming municipality, which is a concern since it has no control over these costs. Something such as placing a cap on costs, requiring the underperforming municipality to sign off on costs, or including language to ensure that the state will use the least expensive option should be included to mitigate this issue.

Interest Rates on Judgments

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.

Amendments to the Countywide Shared Services Initiative (PPGG Part W)

AOT supports the proposal that gives municipalities more flexibility to apply for matching savings grants. Under proposed amendments, 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. Additionally, the proposal provides municipalities with an additional year to apply for matching funds. COVID-19 reinforces that the best laid plans of mice and men often go awry, and various circumstances arise where projects included in CWSSI plans are delayed or unable to be implemented. Even under ideal conditions, projects can get delayed, and making sure these projects could still receive grants when they are

implemented makes it all the more likely that the project will be completed, which is the ultimate goal.

Increase the CHIPS Bidding Threshold (TED Part B)

Highway Law § 10-c (4)(e) prohibits towns from using town employees to perform a public works project funded by CHIPS if the value of the project is \$350,000 or more. In other words, the town must go out to contract and competitively bid public works projects over \$350,000. This proposal increases the monetary threshold from \$350,000 to \$750,000 before a town will be required to competitively bid a CHIPS-funded public works project. AOT supports this proposal as it reduces costs for local governments.

Environmental Issues

AOT supports the various proposals and funding included in the Executive Budget that relate to environmental issues. Specifically, \$400 million in funding for the Environmental Protection Fund is included, an increase over last year; there is an additional \$500 million appropriation to support clean water infrastructure, raising the state's total investment to \$4.5 billion; and the inclusion of legislation for the \$4 billion Clean Water, Clean Air, and Green Jobs Bond Act, will all help municipalities uphold public health and safety today without imperiling the health and safety of New Yorkers in future generations. AOT also believes that creating a dedicated water and sewer infrastructure fund would further these goals and encourages the state to adopt legislation creating a program similar to CHIPS for such infrastructure.

Revenue from the Vacation Rental Industry

The Executive Budget includes a proposal that generates an increase in local tax revenue; specifically, Revenue Part V imposes a sales tax on vacation rentals and requires vacation rental marketplace providers to collect sales tax on the vacation rentals they facilitate. The Association of Towns strongly supports this proposal, so long as there is a mechanism in place to ensure that the local sales tax revenue generated from these proposals is fairly distributed to all local governments, rather than leaving the disbursement of the funds to the discretion of the county. While some counties share the local sales tax revenues, others do not, depriving towns of this essential benefit despite the numerous services towns provide. AOT proposes that a portion of sales tax revenue received by counties should be dedicated to fixing county roads that run through towns.

Real Property Taxation and Assessment Issues

Solar and Wind Valuation Technical Corrections and STAR Efficiencies

The Executive Budget (Revenue Article VII Part AA) remedies some of the issues associated with the new solar and wind valuation standardization process by providing the framework necessary to challenge assessments made using this process. That is, property owners wishing to challenge their assessment made pursuant to the state's

model must commence an Article 78 proceeding rather than challenge their assessment at the town level. The Association of Towns supports this change, as the assessor has no discretion in making this state-directed assessment, and the appropriate entity to make any corrections is therefore the state.

Additionally, Revenue Part Z provides for increased efficiencies in the STAR benefit program including, among others, the state sharing information with assessors so that their files can properly reflect taxpayers that are entitled to the STAR benefit. Over the last decade, the state has consistently made changes to the STAR Program that at the outset proposed to reduce and shift the administrative burden away from towns and onto the state. However, in reality, these changes have 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 provide the town officials with the required information to properly administer the program. This proposal is a step in the right direction, and we support these changes.

Conclusion

We are grateful for the opportunity to share our thoughts on this Executive Budget. The Association of Towns truly believes this is one of the strongest starting points of any Executive Budget proposal in years, and we are excited about the improvements this budget could bring. We hope to have an equally strong finish to the budget and look forward to working with the Legislature to make this a reality.