

NEW YORK STATE CONFERENCE  
OF MAYORS & MUNICIPAL OFFICIALS

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# LEGISLATIVE PROGRAM 2016

**ACTION  
REQUIRED**



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### DEAR STATE LEGISLATOR:

The legislative priorities included in NYCOM's 2016 *Legislative Program*, as developed and approved by our 60-member Legislative Committee, share a common objective: to provide local leaders with the resources and flexibility to deliver essential municipal services in the most cost effective manner for the taxpayers they serve. Municipalities are not a special interest group, but rather the providers of services that directly impact the daily lives of each and every resident and business of this state. Mayors are your partners and the success of our municipal governments depends upon a demonstrated commitment by the State, the best example of which would be for you to provide the first increase in unrestricted State aid in eight years.

Cities and villages throughout our State are facing significant – and growing – fiscal challenges, yet are doing all they can to successfully manage these challenges. Each is striving to be tax cap-compliant, but a less-than-1% cap will make that goal unattainable for most. For cities and villages, the tax caps in 2016 will limit their revenue raising capacity by more than \$40 million as compared to under a true 2% tax cap. As with the large increases in aid to schools, an increase in unrestricted state aid to municipalities would be used by our members to remain under the tax cap.

New York's cities and villages need the funding, the tools and a genuine commitment from the State to help break down the barriers to efficiency and community revitalization. Enactment of the proposals advanced by NYCOM in our 2016 *Legislative Program* would ensure local success and the enhancement of our entire State. I look forward to assisting you in any way to reach this goal.



A handwritten signature in blue ink that reads "Peter A. Baynes".

**Peter A. Baynes**

*Executive Director*

*New York State Conference of Mayors*

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# OVERALL PRIORITY

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## Increase Unrestricted State Aid

A strong and growing local-state fiscal partnership is essential to generating economic vitality in all regions of our State. Since local governments are limited by the less-than-2% cap on property tax levies, growth in unrestricted State aid is critical to this partnership. **However, cities and villages have not received an increase in unrestricted aid – AIM Funding – since 2008-09.** In fact, this funding stream has been reduced by \$50 million since that time. School aid, on the other hand, particularly in recent years, has experienced significant growth, with year-to-year increases far exceeding the entire AIM program. The same service provision and property tax relief reasons for giving increased school aid apply to increasing municipal aid.

While AIM funding is a vital source of revenue to many of those municipalities who receive it, NYCOM supports the creation of an additional program that would allocate new aid to all cities, villages and towns in a fair and objective manner, and would account for local fiscal capacity and need. The new program's formula components, at a minimum, should consider a community's demographic challenges such as population, population density, poverty, unemployment and median income. The formula should also consider the amount of tax-exempt property a municipality has within its boundaries, as this has a significant effect on a community's ability to raise revenue.

**The 2016-17 Executive Budget would continue AIM funding at current year levels.**

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***“THE SAME SERVICE PROVISION AND PROPERTY TAX RELIEF REASONS FOR GIVING INCREASED SCHOOL AID APPLY TO INCREASING MUNICIPAL AID.”***

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# ADDITIONAL PRIORITIES

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## Increase State Funding for Water and Sewer Infrastructure

Infrastructure is critical to both a community's economic growth and improved quality of life. While the primary role of a local government is to provide vital services to its residents, cities and villages must also maintain essential public infrastructure such as water and sewer systems. When local officials are struggling to balance their budgets and difficult choices need to be made, local governments must often defer significant infrastructure needs in order to fund the most basic municipal services. The State Comptroller's "Growing Cracks in the Foundation" report (2014) cites three separate studies estimating a combined multi-year funding deficit of \$65.7 billion for municipal infrastructure – of which \$10.7 billion is for water systems and \$20.2 billion is for sewer systems.

Although the State did allocate money to local infrastructure in the 2015-16 State Budget, the amount dedicated to water and sewer infrastructure only scratched the surface in terms of the need that exists in this area. Since New York continues to receive additional settlement money from financial institutions, and is expected to receive approximately \$350 million in higher-than-expected income tax collections, the State must dedicate a significant portion of this funding to help local governments upgrade their water and sewer systems.

**The 2016-17 Executive Budget includes an additional \$100 million for the Water Infrastructure Improvement Act which was funded at \$200 million in the current year budget, of which \$50 million has already been awarded. This funding will be allocated over a two-year period -- \$125 million in 2016-17 and \$125 million in 2017-18.**

## Increase State Funding for Local Highways, Upstate Transit and Complete Streets

In recent years, NYCOM and several other associations have emphasized the need for the State to provide additional resources for local infrastructure. While some of the State's settlement funds were earmarked for this purpose, it falls far short of what is necessary to address our deteriorating local roads and bridges. On October 10<sup>th</sup>, the Governor announced that the State was committing \$8.3 billion over five years to upgrade the MTA's transit system. While we support the need for a safe and reliable transit system for NYC, upstate's roads, bridges and highways have significant needs that must be met as well.

In the past, the State's Dedicated Highway and Bridge Trust Fund and the Dedicated Mass Transit Trust Fund were similar in size. However, in SFY 2009-10 the State created a five-year capital plan for the MTA but not for the Department of Transportation (DOT). Since that time, investment in transit has outpaced investment in roads and bridges by \$6 billion. NYCOM supports the following legislative proposals to ensure there is sufficient transportation funding statewide:

- **Increase CHIPS Funding** – The Consolidated Highway Improvement Program (CHIPS) assists local governments with the cost of construction, reconstruction and improvement of local highways, bridges and highway-railroad crossings. The funding is distributed based on local highway mileage and vehicle travel. While the CHIPS program has been spared from cuts in recent years, locally-owned roads remain in need of substantial near-term improvements. A 2013 study cited by the Office of the State Comptroller estimates that the funding needs for local roads and bridges total \$34.8 billion through the 15-year period ending in 2030. According to the same report, in 2012, 48% of local roads were estimated to be in poor to fair condition, compared to 46% reported in 2007. Furthermore, in 2012, the Department of Transportation rated more than one-third of local bridges as deficient. Clearly, local governments must receive more bonded or pay-as-you-go transportation funding than they do currently.

- **Increase Funding for Upstate Transit Systems and Complete Streets Initiatives** – Our urban centers must ensure that they can provide safe and reliable transportation options for all users, including pedestrians, bicyclists, motorists and transit users. Like the MTA, upstate transit systems are critical to the growth and prosperity of our communities. Furthermore, the State must provide funding for sidewalks, bike lanes, curb cuts, bus lanes, public transportation stops, crosswalks, median islands, roundabouts and other structures that will ensure our streets are safe for all ages and abilities. Funding for such “complete streets initiatives” will also promote the local economy with easier access to local businesses, as well as facilitate healthier lifestyles by allowing more people to walk and bicycle throughout their communities.

**The 2016-17 Executive Budget would continue CHIPS funding at current year levels. The Executive Budget also includes a \$21 billion DOT five-year capital plan to upgrade critical roads, bridges and other vital transportation infrastructure throughout the State, especially upstate. This plan includes \$2.5 billion to fund three new initiatives: BRIDGE NY (\$1 billion), PAVE NY (\$1 billion) and the Extreme Weather Infrastructure Hardening Program (\$500 million).**

## Strengthen the Tax Cap

While the tax cap has slowed the growth in property tax levies, municipal officials have identified significant unintended consequences that have developed during the local implementation of the cap. Local officials are using all available means of budget-balancing, including austerity spending, drawing down of fund balances, cuts in the size of the municipal workforce, maximization of restructured and shared services between local governments, and postponed investments in key public infrastructure. This local austerity combined with minimal mandate relief and lack of state aid has a price. The quality-of-life in our communities is suffering and local infrastructure – roads and bridges, water and sewer systems – is in arguably its worst condition in a generation.

NYCOM strongly believes that the tax cap should be amended to make it a true 2% cap (as is the case with the state’s self-imposed 2% cap on spending), not one tied to inflation. Absent that, the State should implement a Tax Cap Equalization Aid program that would provide aid in an amount equal to the difference between what the municipality’s property tax levy would be under a 2% cap and what it actually is under the tax cap CPI calculation.

In addition, NYCOM believes there should be an exclusion from the tax cap for municipal expenditures on public infrastructure (just as schools and the State have from their respective caps) and for the self-imposed levies of Business Improvement Districts (BIDs), as the inclusion of these levies is having a significant negative impact on economic development.

## Create and Enhance Tools to Address Abandoned Property and Downtown Redevelopment

Many communities in New York are littered with abandoned properties, the result of the decades-long economic decline in upstate New York. Adding to the number of abandoned properties is the recent subprime market meltdown. Local officials need a comprehensive and effective tool-kit to address these problem properties and to successfully revitalize their downtowns and residential neighborhoods. NYCOM supports the following legislative proposals:

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- **Allow Municipalities to Take Title to Abandoned Commercial Property and Streamline the Notice Process for Abandoned Property Proceedings** – Currently, Real Property Actions and Proceedings Law Article 19-A provides a relatively quick and easy method for local governments to take title to residential property that is “abandoned” within their jurisdictions. However, Article 19-A does not apply to commercial property. This statute should be amended to allow municipalities to take title to all real property that is “abandoned” so that local officials can promptly and effectively address the negative effects these properties have on the surrounding community. Moreover, the notice requirements for judicial proceedings should be amended to match the notice requirements for *in rem* tax foreclosure proceedings, thereby protecting property rights while at the same time implementing a process that is well-established and familiar to both local and judicial officials. (A. 1273-A (Schimel) / S. 294-A (Martins))
  - **Allow Counties to Shorten the Redemption Period for *in rem* Tax Foreclosure Proceedings** – By default, the redemption period for *in rem* tax foreclosure proceedings is two years. Two years is too long a time for properties that are being neglected or that have been abandoned. While cities may shorten their redemption period by local law, counties (who are responsible for a substantial percentage of all *in rem* tax foreclosures) are bound by the redemption periods set forth in the Real Property Tax Law. Consequently, this law should be amended to allow counties to shorten the redemption period for abandoned properties to one year. (A. 7556 (McDonald) / S. 5845 (Marchione))
  - **Permit Claims Against Fire Insurance Proceeds** – Currently, a municipality has the authority to enforce a lien for unpaid property taxes against the proceeds of a fire insurance policy on all real property (See Insurance Law §§ 3410 & 331), except properties containing one- or two-family structures (See General Municipal Law § 22). Allowing other lienors to place liens against such proceeds on these properties - to the exclusion of local governments - unfairly burdens the municipality and significantly inhibits their ability to recover delinquent taxes. NYCOM supports legislation that would permit a municipality to place a lien for unpaid property taxes against the proceeds of a fire insurance policy on any real property located within a municipality. By enacting this legislation, municipalities would then be treated in the same manner as any other lienor who has made a claim to the insurance proceeds.
  - **Allow Municipalities to Pierce the Corporate Veil of Shell Corporations that Abandon Properties** – Many neglected and vacant properties are owned by corporations, limited liability companies, or limited liability partnerships that abandon those properties when they become economically unviable. These corporations, LLCs and LLPs leave local governments (and local taxpayers) having to deal with the cost of abating nuisance conditions and demolishing unsafe buildings. State law should be amended to allow local governments to pierce the corporate veil of limited liability entities to hold their parent corporations and their individual owners responsible for nuisance abatement and demolition costs that exceed the property’s value. (A. 5259-A (McDonald)/S. 4310-A (Martins))
  - **Allow Local Governments to Force Mortgage Holders to Complete the Foreclosure Process or Release Their Mortgage Rights for Properties that Have Been Abandoned by the Owners** – Local governments are struggling to deal with properties that are delinquent on their mortgage payments, but for which the banks are delaying the completion of the foreclosure process. Unfortunately, in many such instances, the owners are abandoning their properties under the threat of mortgage foreclosure, leaving no one to maintain the property. Because of the delays, the properties remain in a legal limbo, inhibiting the ability of local officials to address the blighting influence of the property on adjacent properties and the surrounding community. Local governments should be allowed to obtain court orders compelling mortgagees to complete the foreclosure process or to relinquish their legal interests in properties that have been abandoned by the property owner.

## Prohibit Unfunded State Mandates

Although in recent years there appears to have been an increased legislative sensitivity to shifting or imposing additional costs on local governments, there is still nothing that prohibits the State Legislature from enacting unfunded mandates. NYCOM supports legislation to constitutionally prohibit the enactment of statutory or regulatory mandates which would impose a direct or indirect fiscal burden on local governments unless an estimate of such fiscal burden is computed – with input from the State’s local government associations, including NYCOM – printed on the bill, and an appropriation is made sufficient to hold each local government harmless from any part of such fiscal burden. In addition, all current unfunded mandates should be required to sunset in two years unless it can be shown that such mandates serve an essential purpose and a funding source can be identified to offset the cost to local governments.

## Authorize Municipalities to Charge for Services Provided to Tax-Exempt Properties

NYCOM supports legislation that would permit municipalities, at local option, to impose charges on tax-exempt properties to defray a portion of the cost of services local governments provide. While municipalities currently have the ability to impose user fees and assessments to cover some of these expenses, they are prohibited from doing so for some of the most costly services, including police and fire protection. In 1971, a “service charge” law was enacted in New York but it was never implemented, and was ultimately repealed. In 2008, NYCOM was successful in getting the State Legislature to introduce a “service charge” bill but, unfortunately, it was never acted upon. Since that time, there has been significant discussion but little action on this issue. Local governments must be given the ability to recoup at least a portion of the expenses they incur servicing tax-exempt properties. Despite the reluctance among the courts and the State Legislature to address this issue, NYCOM supports legislation that would impose charges on those tax-exempts that have the greatest ability to pay, such as medical and educational institutions and facilities.

## Restructure and Reform the Gross Receipts Tax

Under current law, cities and villages have the option of imposing a gross receipts tax (GRT) on the gross operating income of utility companies located within their boundaries, at a rate of 1%. The GRT is one of the few sources of non-property tax revenue that is available to these two classes of local governments. Unfortunately, due to the fact that the laws governing this tax were written decades ago and have not been amended to account for changes in technology or the marketplace, cities and villages that impose this tax are being shortchanged. NYCOM supports the following amendments to the local GRT:

- **Increase the Maximum Rate** - NYCOM supports legislation that would permit municipalities, at local option, to impose the GRT at a rate of up to 3%. The cities of Buffalo, Rochester and Yonkers already have this ability and do impose the tax at the higher 3% rate.
- **Require Compliance with Gross Receipts Tax Laws** - In January 2009, NYCOM got involved with an issue concerning National Grid and the applicability of the local GRT on energy transactions involving Energy Service

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Companies (ESCOs) – specifically the revenues associated with the sale of the commodity by ESCOs, as well as the revenue associated with the delivery to ESCO customers. At the time, National Grid believed that no portion of the transaction involving ESCO customers (neither the purchase of the commodity nor the delivery) was subject to the local GRT.

NYCOM requested and subsequently received an Advisory Opinion from the Department of Taxation and Finance in July 2009 stating that ESCO transactions are, in fact, subject to the local GRT. Despite this Opinion, many ESCOs still do not pay the tax to those cities and villages that impose it. While this action is clearly not consistent with the Opinion as written, the Opinion does not address the issue of where the transaction takes place. In addition, NYSEG and RG&E have taken the position – unique among all other gas and electric utilities in New York State – that when a customer buys their gas and/or electric supply from an ESCO, these utility companies do not pay any GRT on the revenue they derive from the delivery of that commodity.

To address these issues, NYCOM proposes that the PSC institute reporting requirements that would assist municipalities with the identification of both Competitive Local Exchange Telephone Companies (CLECs) and ESCOs that have customers within the municipality's borders, along with their aggregated revenue. In addition, NYCOM proposes a strengthening of Uniform Business Practices for ESCOs to require compliance with local tax laws. Absent these changes, NYCOM may need to consider a legal challenge or legislative amendment to clarify that ESCO transactions are subject to the local GRT.

- **Expand the Scope to Include Cellular Services** - In recognition of the predominance of wireless technology and to promote equity in the tax treatment of various types of telecommunications providers, both the State and the City of New York have made changes to their respective statutes to include cellular services as taxable for purposes of the State's excise tax and the City's gross receipts tax. NYCOM supports amendments to current State law to ensure that cellular telephone services are subject to the local GRT in all cities and villages.

## Reform the Civil Service Appointment Process

Municipalities are always looking for innovative ways to manage their workforce more effectively and efficiently. Unfortunately, in many instances, they are restricted by arcane civil service rules. The Civil Service Law should be amended to authorize appointments without examination for professional, scientific, technical, information technology or other employees with specialized skills, such as water and wastewater operators, and chiefs of police.

## Amend Restrictions Governing Municipal Health Insurance

NYCOM supports amending State law to allow smaller municipalities to join multiple employer trusts that are experience-rated, thereby allowing them to share in the health insurance costs savings associated with these trusts. State law has required that the health insurance policies of municipalities with 50 or fewer employees must be community-rated. This restriction increased to 100 or fewer employees as of January 1, 2016. Approximately 75% of NYCOM members have fewer than 50 employees and approximately 85% have few than 100 employees. In addition, a portion of the Municipal Restructuring Fund established in 2015-16 should be used to help create and implement Health Insurance Consortiums like the successful one in Tompkins County.

## Reduce Public Construction Costs

NYCOM supports the following legislative proposals that will spur building and development at the local level:

- **Authorize Use of Design-Build** – The design-build model is a project delivery system used as an alternative to the traditional design-bid-build model. Under the latter approach, design and construction are split – separate entities, separate contracts, separate work. The design-build system is an integrated approach that provides the municipality with design and construction services under one contract. By relying on a single point of responsibility, the design-build model minimizes risks for the project owner, reduces the delivery schedule by consolidating the design phase and construction phase with a single source of contact, and cuts costs by streamlining the construction process. The model can also be used to facilitate public-private partnerships in order to share the cost of building and infrastructure projects with the private sector. Several State agencies are currently authorized to use design-build. However, no authority exists for municipalities to use this process.
- **Reform the Scaffold Law** – Enacted in 1885, the Scaffold Law holds contractors, employers and property owners absolutely liable for gravity-related injuries, even if the worker was grossly negligent. Municipalities are large property owners, and as such, are faced with widespread liability for accidents that occur on worksites beyond their supervision. Studies have shown that general liability insurance premiums have skyrocketed due to increased litigation resulting from the Scaffold Law. In fact, in New York – the only state with this law on the books – these insurance premiums are 300% to 1200% higher than any other state in the country. As a result, municipalities involved in construction projects are faced with significantly higher construction costs.

In light of the damaging effect of the Scaffold Law on local governments and their taxpayers, NYCOM supports A .3209 (Morelle)/S. 543 (Gallivan). This legislation would amend the Civil Practice Law and Rules to establish a comparative negligence standard for personal injury, property damage or wrongful death actions arising under the Scaffold Law when the employee has committed a criminal act, used drugs or alcohol, failed to use safety devices, or failed to comply with employer instructions or safe work practices when a cause of action accrued. This legislation would create a more equitable standard, holding employees who directly contribute to their injury liable for their apportionment of fault.

- **Repeal the Wicks Law** – Dating back to 1912, the Wicks Law continues to be one of the most onerous mandates facing local governments. In 2008, the Governor and the State Legislature finally agreed to amend this outdated statute, but these reforms, while supported by NYCOM, were only a first step toward making meaningful changes to this mandate. Prior to July 2008, General Municipal Law § 101 required separate plumbing, heating/ventilation/air conditioning and electrical contracts for State and local government construction projects costing more than \$50,000. The thresholds are now \$3 million in New York City, \$1.5 million in Nassau, Suffolk and Westchester counties, and \$500,000 in the rest of the State. Additionally, public work projects for which a municipality opts to require the contractor to use a project labor agreement (PLA) are exempt from the Wicks Law provisions.

Despite these changes – particularly the threshold increases – many municipal projects are still subject to the multiple bidding requirements under the Wicks Law. This requirement has the effect of increasing costs, delaying projects and, in some cases, preventing projects from going forward at all. Eliminating this onerous mandate will help stimulate our languishing local economies by allowing municipalities to utilize a more cost-effective approach to executing public projects, thereby removing a major impediment to communities investing in much-needed infrastructure and other capital improvements.

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**The New York State Conference of Mayors and Municipal Officials (NYCOM) is an association of, and for, cities and villages in New York. Since 1910, NYCOM has united local government officials in an active statewide network focused on the singular purpose of finding the most efficient means of providing essential municipal services. Through the active participation of our membership, which represents more than 12 million New Yorkers, NYCOM is an aggressive advocate for city and village interests before the Executive, Legislative and Judicial branches of state government. Our association is a readily accessible source of practical information touching upon every area of municipal activity, and is also a leader in the on-going training and education of local officials.**