



# 2023

## Proposed Legislative Program

1. Preserve and Support Home Rule
2. Support Highway, Bridge and Transportation Funding
3. Strengthen State and Local Government Partnerships by Increasing Local Revenue-Sharing Program Funding
4. Reform Inequities in the Real Property Tax Cap Formula
5. Support Affordable Housing while Preserving Local Authority
6. Support the Expansion of Cellular and Broadband Service while Preserving Local Authority
7. Provide All Towns with the Authority to Set Speed Limits on Local Roads
8. Increase Justice Court Funding
9. Prior Written Notice for Trees Planted or Maintained by Towns
10. Amend Civil Service Rules to Foster a More Efficient Hiring Process for Public Employers
11. Amend Prevailing Wage Regulations

Issues Referred to Staff

**Submitted for consideration to the Association of Towns Delegates to the Annual Meeting**

***Bill Moehle, Town Supervisor, Town of Brighton, Monroe County  
First Vice President, Association of Towns, Chair of the Resolutions Committee***

# 2023 Proposed Resolutions for Delegates

## Resolution No. 1

### Preserve and Support Home Rule

WHEREAS, the New York State Constitution grants broad home rule powers to local governments and places restrictions on the state Legislature in order to preserve these powers; and

WHEREAS, home rule authority encompasses a wide range of subjects, including but not limited to the authority to: adopt, amend and repeal local laws in the exercise of a town's functions, powers and duties; share services with other local governments; levy and collect rents and penalties in a town; adopt, amend and repeal zoning regulations; and

WHEREAS, under *Municipal Home Rule Law and the Statute of Local Governments*, local governments' home rule powers must be liberally construed; and

WHEREAS, New York is one of many states across the country granting local governments home rule authority, and this authority should be recognized at the federal level; and

WHEREAS, the exercise of home rule powers allows local governments to meet the unique and diverse needs of local residents while also fostering citizen participation in government; and

WHEREAS, New York's diverse communities are best served by maintaining the principles of home rule, including those set forth in the state Constitution, Local Government Bill of Rights, Statute of Local Governments and the Municipal Home Rule Law; NOW THEREFORE BE IT

**RESOLVED**, that the Association of Towns calls on the Governor and the state Legislature to preserve and strengthen home rule; and BE IT FURTHER

**RESOLVED**, that the Association of Towns will oppose any state or federal initiative that would weaken or eliminate New York's long-standing tradition of home rule and local government authority.

#### Background

This resolution is routinely included in AOT's Legislative Program and looks to preserve and strengthen home rule and bolster the authority and autonomy town governments need to make local decisions and better serve town residents. Broadly defined, home rule is a way for the state to transfer a portion of its governmental powers to local governments by allowing them to manage their own affairs. Granted in 1963-64, home rule authority has been weakened over the years through court cases and legislative enactments, preempting towns from acting on areas of local concern.

## Resolution No. 2

### Support Highway, Bridge and Transportation Funding

WHEREAS, local governments are responsible for 85 percent of New York's roads and bridges, the repair and maintenance of which are funded by real property taxes and state and federal funding; and

WHEREAS, a safe and dependable transportation network is necessary to protect users of New York's roads, bridges and mass transit and to encourage and sustain economic development; and

WHEREAS, studies of New York's extensive local road system continue to identify a multibillion dollar shortfall in funding for local highways and bridges; and

WHEREAS, an enduring and reliable stream of revenue for our local road system is essential for towns and

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other local governments to be able to properly plan their highway and bridge programs; NOW THEREFORE BE IT

**RESOLVED**, that Association of Towns calls on the Governor and the state Legislature to maintain, support, and increase funding for CHIPS, PAVE-NY, BridgeNY, Extreme Winter Recovery, POP and other transportation funding in the 2023-2024 State Budget and to continue to provide stable and sustainable long-term funding for local infrastructure.

## Background

Predictable and reliable highway funding to repair, restore, and maintain local roads and bridges is crucial to ensure the safety of the traveling public, strengthen our economy, and lower property taxes. This resolution calls upon our state partners to continue to support local transportation funding for core programs like CHIPS and new programs like PAVE-NY, BridgeNY, Extreme Winter Recovery and POP.

## Critical Funding Need

Prior to the pandemic, the New York State Association of Town Highway Superintendents estimated that local governments should be receiving an additional \$1.3 billion annually in state highway funding to address need and usage patterns, a figure that is outpacing allocation amounts. There are more reports highlighting the state of New York's infrastructure and funding needs:

- [Locally Owned Roads by the Numbers \(OSC 2022\)](#)
- [2022 Report Card for New York's Infrastructure \(ASCE 2022\)](#)
- [New York Transportation by the Numbers \(TRIP 2022\)](#)

## Five-Year Capital Plan & Program Funding in the 2022-2023 State Budget

The 2022-2023 State Budget included \$32.8 billion in funding for a new five-year DOT capital funding plan (through the 2026-27 fiscal year). The five-year NYSDOT Capital Plan includes funding for the Consolidated Highway Improvement Program (CHIPS), Extreme Winter Recovery, PAVE-NY and BridgeNY. The Capital Plan also included a new program to repair potholes aptly called Pave our Potholes (POP), which will be implemented using the standard CHIPS formula. Towns rely on these critical funding programs to support their highway infrastructure. You can read more about the new Capital Plan and funding allocations on the NYSDOT [website](#).

In the 2022-2023 final state budget, CHIPS was maintained at \$538.1 million, Marchiselli was maintained at \$39.7 million, PAVE-NY was maintained at \$150 million, Extreme Winter Recovery was maintained at \$100 million and the Touring Roads program was maintained at \$100 million. The BridgeNY Program was increased by \$100 million for a total of \$200 million. In addition, the governor's new Operation Pave our Potholes (POP) Program was funded at \$100 million for SFY 2022-2023. NYSDOT has posted individual allocation amounts and program details on its [website](#).

## Infrastructure Investment and Jobs Act

Federal surface transportation funding was included in the federal Infrastructure Investment and Jobs Act, which was signed into law on Nov. 15, 2021 and provides authorization for federal aid highway programs nationwide as follows: \$52.5 billion in FY 2022, increasing 2 percent every year, topping out at \$56.8 billion in FY 2026. For more information on the Infrastructure Investment and Jobs Act please see the [2021 NATaT report](#) or visit the Federal Highway Administration [website](#).

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## Resolution No. 3

### **Strengthen State and Local Government Partnerships by Increasing Local Revenue-Sharing Program Funding**

WHEREAS, the Aid and Incentives to Municipalities (AIM) Program is a source of unrestricted aid wherein revenue is redistributed and shared with towns, cities (except New York City), and villages in New York State; and

WHEREAS, unrestricted aid funded by the state demonstrates a strong partnership between local governments and the state and is an established way for the state to provide meaningful support to local governments and keep real property taxes down; and

WHEREAS, towns are required to comply with state mandates, such as the payment of prevailing wages for municipal projects, without any significant funding source; and

WHEREAS, funding levels for AIM have not been increased since 2010 and fail to keep up with the rate of inflation; and

WHEREAS, when adjusting for inflation, AIM funding has actually suffered a 24 percent decrease since 2011; NOW THEREFORE BE IT

**RESOLVED**, that the Association of Towns calls on the Governor and state Legislature to increase AIM appropriations funded by the state by \$200 million to partially offset the rate of inflation and increased costs borne by local governments.

#### **Background**

We didn't arrive at the \$200 million increase to the preeminent state revenue-sharing program arbitrarily. Revenue sharing between New York State and local governments has taken various forms over the years, and when the Aid and Incentives to Municipalities (AIM) Program was established as part of the state budget in 2005-2006, its goal was an improved and streamlined way for the state to redistribute state revenue to towns, cities, and villages. In 2019, this state revenue-sharing program was improperly shifted to a county sales tax allocation funding model, with the program restored to state funding in 2022. Reverting back to the state funding model as the program was originally conceptualized is a step in the right direction. However, the state needs to take more action in order to reform the economic inequities local governments have encountered with over a decade of stagnant aid.

Since 2008 — the last time AIM funding was increased in the state budget — the cumulative rate of inflation has been 38.4 percent. The 2008 AIM amount of \$755,014,463 adjusted for inflation would be \$1,045,054,505.27. In other words, the state would need to add \$290 million to AIM in 2023 to simply cover the amount of money lost due to inflation alone. Accordingly, an increase of \$200 million is not only a reasonable request, but in fact an essential and long-overdue one that would allow towns and the state to continue their strong partnerships.

## Resolution No. 4

### **Reform Inequities in the Real Property Tax Cap Formula**

WHEREAS, the real property tax cap, which was designed to limit the property taxes levied by local governments to 2 percent or the rate of inflation, whichever is less, contains inequities that penalize towns; and

WHEREAS, New York State governs how towns raise revenue, and property taxes are the primary source of

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revenue for towns; and

WHEREAS, other sources of revenue, such as state aid, have been stagnant while expenses and inflation continue to surge; and

WHEREAS, the actual property tax cap levy amount has been below 2 percent many times since it began in 2011; and

WHEREAS, towns are required to include costs associated with infrastructure projects in their tax cap calculation, while other entities have the ability to exclude these costs; and

WHEREAS, towns are prohibited from including the costs attributable to PILOT and tax-exempt properties in their tax cap calculation, even though these properties use town services and resources; and

WHEREAS, towns are required to reduce their tax levy limit by the amount of savings recognized from a transfer of function, which discourages shared services; and

WHEREAS, towns are required to include improvement district costs in their tax cap calculation despite these districts being a separate taxing entity that provide essential services; and

WHEREAS, despite these inequities, the Property Tax Cap was made permanent in 2019; NOW THEREFORE BE IT

**RESOLVED**, that the Association of Towns calls on the Governor and state Legislature to adopt tax cap reforms to remedy inequities in the formula, including imposing a true 2 percent cap, removing infrastructure project costs from the calculation, allowing growth from PILOT and tax-exempt properties to be included in the tax cap calculation, removing barriers to shared services that would save taxpayer dollars, and removing special improvement district costs from the tax cap calculation.

## **Background**

This resolution regularly appears on AOT's legislative priorities platform. The Real Property Tax Cap (General Municipal Law §3-c), which established a limit on the annual growth of property taxes levied by local governments and school districts to 2 percent or the rate of inflation, whichever is less, was introduced in 2011 and permanently adopted in 2019.

The Association of Towns has identified simple adjustments that can be made to the tax cap formula that would remedy inequities in the tax cap and allow towns and other local governments to implement the cap in a less deleterious manner. Specifically, since its inception in 2011, the 2 percent tax cap has often been well below 2 percent. Now that the tax cap is permanent, we believe the cap should reflect a true 2 percent limit rather than be determined by economic fluctuations that are well beyond a local government's control, which would offer towns the ability to engage in better long-range budgeting and planning. Indeed, local governments have been significantly impacted by the recent state of the economy, with the rate of inflation of 7.17 percent at its highest since the tax cap began for local governments with a 2023 calendar fiscal year. While a permanent 2 percent cap will not completely ameliorate the impacts of inflation, it will allow towns to plan their budgets accordingly.

Additionally, towns are required to include infrastructure costs in their tax cap calculation. Conversely, school districts are not required to include these costs in their tax cap calculation because they are subject to referendum requirements and voter approval. However, most if not all town capital projects are also subject to referendum requirements, either via the financing process or through the reserve fund process (see General Municipal Law section 6-c, Town Law sections 81 & 220, and Local Finance Law section 35.00). Despite town infrastructure projects receiving voter approval through the referenda process, towns must

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include these costs in their tax cap calculation. This inequity should be remedied to apply the exclusion of infrastructure costs for both school districts and local governments.

Moreover, towns should be able to include growth from PILOT and tax-exempt properties in their tax cap calculations. Local governments experience increased costs and development associated with these properties that use and benefit from municipal services, yet the growth from these properties cannot be taken into account when imposing the tax cap formula. These omissions from the formula penalize local governments that experience increased costs and development, as PILOT and tax-exempt properties use town services and resources. A simple legislative fix would remedy this obvious contradiction.

Additionally, local governments must reduce their tax levy limit by any amount of any savings realized from a transfer of function. Ultimately, this serves as a disincentive to share services, as any potential savings realized reduces that local government's levy limit and its ability to tax within the cap. To achieve economy and efficiency and incentivize shared services, this penalty should be removed from the tax cap formula.

A final consideration for the tax cap is to exclude the costs associated with special improvement districts from the tax cap calculation, as these districts are a separate taxing entity that provide essential services. Including these costs in the tax cap calculation serves as a disincentive to take on needed projects and necessary updates, as they are often costly and require the override of the tax cap. Accordingly, excluding these improvement districts from the town's tax cap calculation will ensure that important projects are completed and provide equity to towns that are currently unfairly penalized with the inclusion of these costs in their tax cap calculation.

## Resolution No. 5

### Support Affordable Housing while Preserving Local Authority

WHEREAS, having affordable places to live is essential for a community to thrive; and

WHEREAS, the rising cost of living and scarcity of available housing has created an affordable housing issue in many areas of New York State; and

WHEREAS, proposed legislation included in the 2022-2023 Executive Budget and legislation introduced in the New York State Assembly and Senate would have preempted local government's zoning authority in an effort to expand affordable housing; and

WHEREAS, regulating residential housing falls squarely under the purview of municipal home rule; and

WHEREAS, many towns have provisions in their local codes supporting affordable housing options and development in ways that make sense for their communities; and

WHEREAS, the state can support and expand affordable housing options by working with local governments, for example, by funding local water and sewer infrastructure, providing further training and education for local land use officials, or creating affordable housing incentives; NOW THEREFORE BE IT

**RESOLVED**, that the Association of Towns calls on the Governor and state Legislature to collaborate with local governments on any state initiatives addressing affordable housing; and BE IT FURTHER

**RESOLVED**, that the Association of Towns calls on the Governor and state Legislature to uphold local authority as granted by Municipal Home Rule Law in any legislation or state programs created to address affordable housing.

### Background

In many areas of New York State, there is a dearth of available affordable housing options due to,

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among other reasons, rising costs and inadequate housing supply. In 2021 and 2022, legislation in the Senate and Assembly (A4854A/S4547A) attempted to address the affordable housing crisis by requiring local governments to adopt local laws allowing for unlimited accessory dwelling units (ADUs), which are secondary residential spaces either attached to the primary residence (like an in-law or basement apartment) or else a freestanding structure used as a residence located elsewhere on the property (such as a carriage house). The legislation, in addition to the mandate of allowing ADUs, put significant restrictions on what could be included in the local law. For example, municipalities were not allowed to impose parking requirements; they would have been precluded from having setback requirements; and towns would not have been able to consider whether the existing water and sewer infrastructure could support more residences. The 2022-2023 Executive Budget included a near-identical proposal.

The one-size-fits-all, top-down approach in an effort to create affordable housing options fails to consider that many towns already have local laws allowing for ADUs and development of other forms of affordable housing. It is also insufficient to address the specific needs and situation of the community. For example, AOT heard from members that parking was a huge issue in certain neighborhoods, and allowing unmitigated ADU development in those areas would pose a public safety issue. Rather than preempt local zoning authority or creating mandates, this resolution proposes that the state support affordable housing development by working with local governments.

## **Resolution No. 6**

### **Support the Expansion of Cellular and Broadband Service while Preserving Local Authority**

WHEREAS, access to broadband internet service, cellular service and advancing 5G technology is essential for public safety, commercial economic growth, our education systems and the overall well-being of our citizens; and

WHEREAS, access to these services is regarded as a basic infrastructure necessity of the 21st century, providing a means of access to information and communication for citizens and businesses that is used by a growing percentage of the world's population; and

WHEREAS, lack of access to broadband internet service and cellular service may cause property values to depreciate; and

WHEREAS, local officials must balance their constitutional duty to taxpayers to manage municipal growth and infrastructure in a safe, efficient and fiscally prudent manner with the needs of private industry; and

WHEREAS, there have been state and federal legislative and regulatory initiatives to preempt local authority and limit the ability of local governments to tax telecommunications equipment; and

WHEREAS, there are still significant areas of New York State without access to high-speed broadband or cellular services because of geographic isolation, topographic conditions and/or low population density;  
NOW THEREFORE BE IT

**RESOLVED**, that the Association of Towns calls on the Governor and the state Legislature to continue to support broadband and cellular access and deployment through additional funding, legislative initiatives and programs while preserving local governments' authority over municipal infrastructure, siting decisions, fees and application review periods, as well as the ability to tax telecommunications infrastructure as real property.

### **Background**

This resolution looks to shore up the local authority of towns as they grapple with various issues associated with the telecommunications industry, while also inviting cellular and broadband development in their

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boundaries. For example, in *T-Mobile Northeast, LLC v. DeBellis*, 32 NY3d 594 (2018), the NYS Court of Appeals upheld that various telecommunications data transmission equipment (such as base transceiver stations, antennas, and coaxial, T-1, and fiber optic cables) falls under the definition of taxable real property. Legislation was introduced in 2019 (see A8201/S6511), and again in 2021 (see A712/S5389), trying to circumvent this ruling, but both efforts ultimately stalled in the Assembly.

Furthermore, several state budgets have contained proposals to preempt local authority over small cell wireless facilities sited in municipal rights-of-way. In addition to violating home rule principles, the proposed preemption in no way guarantees that service would be extended to underserved areas. A version of this resolution was included in AOT's 2019, 2020, 2021 and 2022 Legislative Programs.

## **Resolution No. 7**

### **Provide All Towns with the Authority to Set Speed Limits on Local Roads**

WHEREAS, Vehicle & Traffic Law § 1662-a authorizes towns only classified as suburban and with a population over 50,000 to set speed limits on all highways within a town other than state highways maintained by the state, while all cities and villages, regardless of size, may set their own speed limits; and

WHEREAS, suburban towns and those with a population over 50,000 may only reduce the speed limit to 25 miles per hour; and

WHEREAS, all other towns must submit a request to the New York State Department of Transportation (DOT) in order to have speed limits reduced; and

WHEREAS, it can take as long as two years for DOT to process requests for speed limit reductions, with requests often being declined; and

WHEREAS, reducing speed limits on local highways is an easy and cost-effective way to limit the severity and frequency of accidents; and

WHEREAS, towns, as the entity in charge of highway maintenance and familiar with local traffic patterns, are in the best position to evaluate the areas where reducing the speed limit would be most beneficial;  
NOW THEREFORE BE IT

**RESOLVED**, that the Association of Towns calls on the Governor and state Legislature to amend Vehicle and Traffic Law § 1662-a so that all towns have the authority to set speed limits via local law on town roads within their jurisdictions within the limits outlined in the statute.

### **Background**

This resolution periodically appears on AOT's legislative priorities. Currently, the statutory default on local roads is 55 miles per hour (see Vehicle and Traffic Law § 1180-a[1]), and only towns classified as suburban and those with over a population over 50,000 have the authority reduce the speed limit, with 25 miles per hour being the lowest allowable limit (see Vehicle and Traffic Law § 1662-a). The proposed amendments would extend the authority to reduce speed limits on local roads below the statutory default of 55 miles per hour to all towns, not just those that meet a certain population threshold or classification, which is consistent with how villages and cities are treated (see Vehicle and Traffic Law § 1643).

## **Resolution No. 8**

### **Increase Justice Court Funding**

WHEREAS, town justice courts provide an essential service that is primarily funded by local real property

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taxes despite many town justice courts processing state violations; and

WHEREAS, the state-established reimbursement fund that was designed to assist local governments with the operational expenses associated with processing state violations has not been increased in over 25 years; and

WHEREAS, the rate of inflation is the highest it has been in over four decades; and

WHEREAS, the majority of the fees collected by town justice courts are paid to the state and county; NOW THEREFORE BE IT

**RESOLVED**, that the Association of Towns requests legislative action to increase justice court fees that are limited by statute from \$15 to \$25 to account for the cumulative rate of inflation in order to assist local taxpayers in funding justice court expenses that serve the state and to more accurately reflect the costs incurred by town justice courts.

## **Background**

This resolution periodically appears on AOT's legislative priorities platform. Town justice courts are primarily funded by local real property taxes, despite the fact that the majority of funds collected in town justice courts is paid to the state and county. For example, in 2009, towns retained only an average of 42 percent of the \$183.5 million collected in their courts, with 53 percent of the revenue going to the state and the remaining 5 percent to the county; more than half of the revenue taken in by town justice courts is paid to the state and county. This number reflects the common and disparate issue encountered by many town justice courts, wherein a significant percentage of their collections are distributed to the state for moving and other Vehicle & Traffic Law violations that happen within their limits.

General Municipal Law § 99-L provides for the payment of specified fees to towns for services performed by town justice courts. However, the current reimbursement rate of \$15 has not been increased since 1997. The cumulative rate of inflation since 1997 of 85.7 percent necessitates an increase in these fees. In order to make towns whole on these costs to reflect the rate of inflation, the fees in General Municipal Law § 99-L should be increased, at minimum, to \$25 for criminal actions, moving violation proceedings, license suspension or revocation orders, and examination of any deposition and information and the issuance of a search warrant by the justice court.

## **Resolution No. 9**

### **Prior Written Notice for Trees Planted or Maintained by Towns**

WHEREAS, towns and town superintendents of highways often engage in planting and maintaining trees for many reasons, including for environmental, health and aesthetic benefits to the town, its residents and visitors; and

WHEREAS, local officials must balance the many benefits of planting and maintaining trees with the potential for expense and liability in undertaking such planting and maintaining of trees; and

WHEREAS, Town Law § 65-a provides that prior written notice and a subsequent failure to reasonably repair are prerequisites to maintaining a civil action against any town or town superintendent of highways for damages or injuries to person or property sustained by reason of certain defects to highways, bridges, culverts or sidewalks; and

WHEREAS, Town Law § 65-a does not address what prerequisites, if any, exist with respect to maintaining a civil action against any town or town superintendent of highways for damages or injuries to person or

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property sustained by reason of defective conditions of trees planted or maintained by the town; and

WHEREAS, establishing prior written notice and a subsequent failure to reasonably repair as prerequisites to maintaining a civil action for damage or injury caused by defective conditions of trees will reduce the uncertainty of expense and liability, and will incentivize towns to plant and maintain trees for the benefit of their residents, visitors and physical environments; and

WHEREAS, establishing such prerequisites with respect to defective conditions of trees is consistent with the existing prerequisites in Town Law § 65-a; NOW THEREFORE BE IT

**RESOLVED**, that the Association of Towns calls on the Governor and the state Legislature to amend Town Law § 65-a to provide for prior written notice and a subsequent failure to reasonably repair as prerequisites for maintaining a civil action against any town or town superintendent of highways for damages or injuries to person or property sustained by reason of defective trees planted or maintained by towns or town superintendents of highways.

## Background

This resolution seeks to expand Town Law § 65-a to establish prerequisites for maintaining a civil action for damages or injury to person or property against any town or town superintendent of highways in connection with defective trees planted or maintained by a town or town superintendent of highways. This expansion will reduce uncertainty for towns relative to the expense and liability of planting and maintaining trees. As such, it will incentivize towns to further engage in planting and maintaining trees in ways that benefit their residents, visitors and physical environments. Additionally, expanding the prerequisites in this manner is consistent with the intent and spirit of the existing statute.

## Resolution No. 10

### Amend Civil Service Rules to Foster a More Efficient Hiring Process for Public Employers

WHEREAS, many public sector employers are struggling to find qualified employees to fill positions; and

WHEREAS, towns must follow civil service rules and regulations on hiring; and

WHEREAS, the statutory framework and the civil service rules and regulations pose many unnecessary burdens to hiring qualified employees to do the work of the people; and

WHEREAS, amendments to civil service rules that could be easily implemented would alleviate some of these burdens without diminishing the quality of the public sector workforce; and

WHEREAS, amendments to civil service could include, but are not limited to, things like:

- offering continuous recruitment when possible
- standardizing grading metrics on civil service exams across all counties
- updating civil service exams with input from relevant professionals and consultants
- making a provisional employee permanent if a test is not offered within nine months after an individual is provisionally appointed to a position or if an exam is offered within nine months, scoring the provisional appointee on a pass/fail-basis
- requiring that no part-time position be classified as competitive
- simplifying the list canvassing process by allowing for email and phone contact in lieu of mailing letters
- expanding the number of eligible employees for appointments; NOW THEREFORE BE IT

**RESOLVED**, that the Association of Towns calls on the Governor and the state Legislature to amend civil

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service rules to make the hiring process easier for public employees.

## Background

Public employers across the board are having difficulty filling vacant positions. AOT, NYCOM, NYSAC, the New York Library Association, the New York State School Boards Association, the Council of School Superintendents, and the Association of School Business Officials met in September and developed a series of suggested civil service reforms that would not undermine union protections in order to ease some of the civil service hiring requirements that can be burdensome or otherwise thwart the ability to attract qualified candidates and represented the best risk-return ratio.

### 1. Continuous Recruitment

Irregular exam schedules reduce the number of potential candidates and force public employers to hire provisionally. Provisional status can cause quality candidates to reject positions due to the inherent uncertainty, and successful provisional incumbents can be lost due to testing inconsistencies or irregularities, leading to a host of issues, including organizational disruptions, loss of obviously qualified candidates, and added expenses related to canvassing, interviewing, and onboarding of new staff. Offering tests on a continuous basis increases test visibility for potential candidates and helps ensure viable lists.

### 2. Standard Grading Metrics

Candidates frequently take the same exam in multiple jurisdictions; however, they can receive different scores in different jurisdictions. This is particularly concerning when the scores differ on training and experience exams that have been completed with the same information across multiple jurisdictions, causing unnecessary confusion among candidates and reducing confidence in test results. Creating statewide grading metrics eliminates this issue.

### 3. Modernize Exam Content from the Field

Test-takers and employers frequently comment that the subject matter of multiple-choice exams is outdated and has little to do with assessing skills needed for the positions. This is exacerbated in higher-level exams as the subject matter becomes increasingly specific. Subject experts from the field should be regularly engaged to increase the relevance of the questions and to assess necessary skills.

### 4. Transitioning from Provisional to Permanent Appointments

As described in item one, provisional hires create chaos in the hiring process. Putting a cap on the maximum timeframe for provisional status would help reduce the organizational impacts and reduce job uncertainty for potential candidates. This would result in an increased ability to recruit staff and reduce the significant and recurring costs of onboarding new staff. Furthermore, allowing a provisional hire who has been successfully working in a position to take a test on a pass/fail-basis would increase the chance that the organization could retain an employee successfully working in a position.

### 5. Part-Time Positions

Recruitment of part-time staff is increasingly difficult. Complex testing and hiring procedures can frequently result in potential candidates choosing not to pursue these part-time jobs, particularly when there are ample part-time opportunities in the private sector. Many municipal functions operate outside the traditional 9-5, M-F schedules, making part-time staff essential for evening and weekend activities. Allowing for noncompetitive appointments for certain part-time titles on a statewide basis would significantly reduce these hiring obstacles.

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## 6. Allow for An Electronic Canvassing Process

Printing, processing, and postage costs are significant whether managed by the local employer or the municipal civil service office. The additional waiting times required to accommodate mailing multiple letters also increases the time needed for the hiring process and slows down operations, leaving positions open longer than necessary. Allowing email or phone canvassing would create a significant reduction in hiring times and reduce the ongoing organizational impacts of unfilled positions.

## 7. Expand number of eligible employees for appointments

Under current law, public employers may only canvass for potential applicants that scored within the top 3 on the applicable civil service list that the county civil service agency sends the employer. This unnecessarily limits the number of eligible potential employees and reduces the competitiveness of the position. Expanding the number of employees on the applicable test will assist public employers better serve their constituencies.

### **Resolution No. 11**

#### **Amend Prevailing Wage Regulations**

WHEREAS, the New York State Constitution requires laborers, workers, and mechanics “in the performance of any public work” to be paid no less than “the rate of wages prevailing in the same trade or occupation in the locality within the State where such public work is to be situated, erected, or used;” and

WHEREAS, prevailing wage applies to all public works projects under Labor Law Article 8 and to building service contracts above \$1,500 under Labor Law Article 9, a threshold set in 1971 that has not been adjusted for inflation; and

WHEREAS, New York State exempts public works projects less than \$35,000 and purchase and service contracts less than \$20,000 from competitive bidding under General Municipal Law § 103; and

WHEREAS, some states and the federal government exempt small public works projects from prevailing wage regulations, but under Labor Law Article 8, New York applies prevailing wage regulations to all public works projects regardless of cost and has not increased the compliance threshold for inflation for service contracts in over five decades; and

WHEREAS, it can be difficult in rural municipalities to find contractors experienced in the regulatory requirements associated with prevailing wage compliance, which impacts the ability to complete necessary repairs needed to sustain residential services, provide safe work environments, and properly maintain town facilities; NOW THEREFORE BE IT

**RESOLVED**, that the Association of Towns calls on members of the state Legislature and the Governor to amend Article 9 of the New York State Labor Law to exempt building service contracts less than \$20,000 from prevailing wage laws; and BE IT FURTHER

**RESOLVED**, that the Association of Towns calls on members of the State Legislature and the Governor to amend Article 8 of the New York State Labor Law to exempt public works contracts less than \$35,000 from prevailing wage obligations.

#### **Background**

This resolution seeks amendments to the New York State Labor Law to exempt smaller public works projects and service contracts from prevailing wage rates and regulations with a recommendation of a \$20,000 threshold for building service contracts under Article 9 of the Labor Law and a \$35,000 threshold for public works contracts under Article 8 of the Labor Law.

# 2023 Proposed Resolutions for Delegates

General Municipal Law § 103 exempts small contracts from competitive bidding, specifically public works contracts less than \$35,000 and purchase and service contracts less than \$20,000 are exempt from competitive bidding. These monetary thresholds have improved governmental efficiencies in completing small projects without negatively impacting the fair and open bidding process envisioned in the statute. The bidding thresholds were last increased in 1991. In contrast, every public works contract let by a town in New York is subject to prevailing wage rates and regulations (Labor Law § 220). Moreover, the low \$1,500 threshold for building service contracts has not been increased in five decades and should be adjusted for the inflation (Labor Law § 230[1]). Towns therefore may only contract with businesses that have the expertise and resources to comply with the complexities and penalties associated with prevailing wage regulations. While seasoned contractors exist throughout the state, it can be challenging for towns in rural areas to find contractors to take on small jobs such as repairing the roof on the town hall, building a small gazebo at the town park or replacing a faucet in the bathroom at the highway garage. Exempting small projects with a monetary threshold similar to competitive bidding thresholds will provide towns the opportunity to contract with small local businesses to efficiently maintain local assets, provide safe work environments and comfortable community facilities without negatively impacting the labor market.

Other states have successfully extended monetary thresholds to prevailing wage regulations. For example, in Maine public works projects less than \$50,000 are exempt from prevailing wage and in Pennsylvania projects less than \$25,000 are exempt from prevailing wage rates while some states have higher thresholds such as Connecticut, where prevailing wage rates do not apply to new construction projects less than \$1 million and \$100,000 for remodeling projects. For a full list of state prevailing wage thresholds, please see U.S. Dept of Labor Wage and Hour Division report [Dollar Threshold Amount for Contract Coverage Under State Prevailing Wage Laws](#), [January 1, 2022].



# Issues Referred to Staff

The 2022-2023 Association of Towns Resolutions Committee, having considered other recommended position proposals of general concern to towns, has directed the Executive Director and staff to proceed in the following areas:

- **Seek Public Input on Concealed Carry Permitting Laws**