



Proposed Resolutions 2018 Legislative Program

As Reported by the Resolutions Committee of the Association of Towns

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First Vice President, Association of Towns, Chair*

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Resolution No. 1

State Support for Local Highway Administration

WHEREAS, local highways and bridges make up 85 percent of our state's highway system; and

WHEREAS, recent local road system studies continue to identify a multibillion dollar shortfall in funding of local highways and bridges; and

WHEREAS, upgrading the state's 90,000 miles of county and town roads to meet the American Association of State Highway Transportation Officials (AASHTO) minimum standards would cost more than \$9.7 billion; and

WHEREAS, there is a need to statutorily empower local highway superintendents, town boards and engineering professionals to make decisions regarding the maintenance, reconstruction and construction of local low-volume and minimum maintenance roads; and

WHEREAS, the New York State Local Road Classification Task Force developed guidelines for a design process for rehabilitation projects on low-traffic roads, including recommendations for pavement width, bridge width, roadside clear zones and minimum maintenance standards for rural roads that access and protect farms, forests and recreational land; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls upon the Governor and Legislature to increase the base funding for the Consolidated Highway Improvement Program (CHIPS), PAVE-NY and BRIDGE-NY; and BE IT FURTHER

RESOLVED, that the Association of Towns calls upon the Governor and Legislature to authorize localities to make local road classifications as recommended by the NYS Local Road Classification Task Force, which promotes efficient use of taxpayer resources as well as safe travel and farm, forest and open space preservation.

Background

The Association of Towns calls for increased highway funding every year. This resolution seeks increased state funding for highways and bridges as well as legislation that authorizes local road standards that include low-volume and minimum maintenance roads, which we have previously called for in 2007, 2008 and 2009.

Increase State Funding for Local Roads and Bridges

We are in year three of the current Five-Year NYSDOT Capital Program (2015-16 thru 2019-20). The current NYSDOT Capital Program includes two new local funding programs (PAVE-NY and BRIDGE-NY). These programs are short-term supplemental programs to the long-standing Consolidated Highway Improvement Program (CHIPS), which provides dedicated quarterly state

funding to towns for highways and bridges. The 2017-2018 State Budget included \$100 million for the PAVE-NY program, \$150 million for the BRIDGE-NY program with \$20 million set aside for culverts, \$39.7 million for the Marchiselli program and \$438.1 million for CHIPS. The funding for CHIPS and Marchiselli represents no increase in funding for these two programs for the fifth year in a row. In addition, the state budget includes \$65 million for the Extreme Winter Recovery Fund. While increased funding for local roads and bridges through new short-term programs, such as PAVE-NY and BRIDGE-NY, is most appreciated, local officials are calling on the state to increase the base funding for CHIPS, which would represent a long-term state funding commitment.

For additional information on the CHIPS, PAVE-NY and BRIDGE-NY programs, visit:

CHIPS: <https://www.dot.ny.gov/programs/chips?nd=nysdot>

PAVE-NY: <https://www.dot.ny.gov/paveny>

BRIDGE-NY: <https://www.dot.ny.gov/bridgeny>

New York State Association of Town Highway Superintendents' Needs Study

Local governments are responsible for 85 percent of New York's roads and bridges, with 46 percent of vehicle miles travelled in New York occurring on local roads. In 2013, the New York State Association of Town Highway Superintendents released a 20-year needs assessment of local highway and bridge infrastructure, which estimates local pavement needs over the next 15-year period to total \$31.95 billion. Local system bridge needs over the same period is \$2.85 billion. Local governments should be receiving an additional \$1.3 billion annually in highway funding to address the need and usage patterns, according to the report.

Report: An Assessment of Local Jurisdiction Highway and Bridge Infrastructure Needs (2013)

www.nystownhwys.org/wp-content/uploads/2014/11/2013LocalNeedsAssessmentUpdate.pdf

State Comptroller's 2014 Cracks in the Foundation Report

The state comptroller estimates that local governments should be spending \$2.3 billion annually on roads and bridges. www.osc.state.ny.us/localgov/pubs/infrastructure2014.pdf

Statutory Support for Local Low-Volume and Minimum Maintenance Roads

The Local Roads Classification Task Force and the Local Roads Research Coordination Council were created (in 1986 and 1990, respectively) to look at ways to lower costs for rural roads. Several additional councils and organizations have pushed for legislation to formally codify the authority and procedure to designate low-volume and minimum maintenance roads, to no avail (see e.g. A418 Gunther (MS); same as S2537 Griffo). Meanwhile, organizations such as the Legislative Commission on Rural Resources, the Tug Hill Commission and Cornell Local Road offer sample local laws, training and other guidance in the matter.

In the absence of express state statutory authority, many towns have utilized their home rule authority and adopted local road standards by local law. The need for state legislation has become more important as some lower courts have found that locally adopted road standards that include limits on snowplowing services on minimum maintenance roads is inconsistent with

seasonal limited use road designations under highway Law, §205-c (*Weikel vs. Town of West Turin et al* Index No. CA2015-0411; RJ1 No. 524-15-0207 Supreme Court Lewis County (March 24 2016)).

Additional Resources

Guidelines for Rural Town and County Roads: <https://cornell.app.box.com/v/clrp-pb-mgrtcr>

Tug Hill Commission <http://www.tughill.org/wp-content/uploads/2011/09/Questions-and-Ans.-Low-Volume-Road-Design-03-14.pdf>

Cornell Local Roads <https://cornell.app.box.com/v/clrp-pb-hslvrnys>

Resolution No. 2

Fund Local Water, Sewer and Stormwater Infrastructure

WHEREAS, communities within New York State maintain extensive networks of intertwined infrastructure critical to public health and state and local economies; and

WHEREAS, many municipalities are responsible for water systems, sewer systems, stormwater facilities and other infrastructure constructed decades ago under earlier, and possibly outdated, regulatory standards; and

WHEREAS, these systems are owned and maintained at various levels of government and require regular maintenance, analysis and upgrades; and

WHEREAS, while New York State provides application-based funding assistance on a case-by-case basis, the need for improvements to the state's infrastructure impacts the public health of all of our communities; and

WHEREAS, in 1981, the state launched the Consolidated Local Street and Highway Improvement Program (CHIPS), which provides consistent funding assistance for the maintenance of local roads; and

WHEREAS, CHIPS provides a successful model for the distribution of state funding through a fair and equitable formula, ensuring that every municipality receives assistance for sanitary sewer, drinking water and stormwater systems; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns hereby supports a New York State dedicated funding program to provide a fair and equitable formula to distribute funds annually to municipalities to ensure the integrity and reliance of municipal water, wastewater and stormwater infrastructure.

Background

This issue was part of our 2017 Legislative Platform.

New York's aging infrastructure is in dire need of financial investment. In 2015, the American Society of Civil Engineers' New York State Council (council) gave our drinking water systems a letter grade of C and our wastewater systems a D. The council noted that an astounding 95 percent of proposed drinking water projects go unfunded. The Department of Health estimates that New York must spend a minimum of \$38 billion on drinking water infrastructure over the next 20 years to protect the public health. The council also reported that 25 percent of wastewater treatment facilities are currently operating beyond their 30-year life expectancy. Moreover, 22,000 miles of underground sewer systems are more than 60 years old and operating well beyond their intended use. The Department of Environmental Conservation has reported that it would cost \$36.2 billion over 20 years to repair, replace and update New York's aging wastewater infrastructure. Further delaying these projects will result in higher costs to taxpayers and will put the public health and the economy in jeopardy. A coalition of New York advocacy groups representing businesses, environmental interests and local governments estimates that New York needs to invest \$800 million annually to address our aging infrastructure.

New York State principally provides funding for water, sewer and stormwater infrastructure through grants and low- or no-interest loans. The state created the temporary Water Quality Infrastructure Improvement Act of 2015 (WIIA), which provided funding through a grant program administered by the Environmental Facilities Corporation. The Clean Water Infrastructure Act of 2017 extended the WIIA to provide local infrastructure funding for the next four years with a multibillion-dollar investment. Information about this program is on the Environmental Facilities Corporation's website <https://www.efc.ny.gov/WIIA>

In addition to these loans and grants, local governments would benefit from a dedicated funding program similar to CHIPS, so towns could factor predictable annual funding amounts into multiyear capital management plans. Senator Tedisco and Assemblymember Steck have sponsored legislation (S3292/A3907) to create such a program called Safe Water Infrastructure Action Program (SWAP).

Resolution No. 3

Strengthening State Relations through Mandate Relief and Revenue Sharing

WHEREAS, the Congressional Budget Office recently noted that local governments play a significant role in people's lives and in the nation's economy; and

WHEREAS, local governments, in partnership with the State of New York, educate our children, protect our environment, respond to emergencies, care for those in need and foster economic growth; and

WHEREAS, compliance with state and federal regulations increases the cost to taxpayers to fund state and local services; and

WHEREAS, state revenue sharing, program funding and technical assistance has not kept pace with the increasing costs to provide these services; and

WHEREAS, many of these services are therefore funded with local real property taxes; and

WHEREAS, the state has evinced a commitment to reduce property taxes with the enactment of the Real Property Tax Cap; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls upon the Governor and the Legislature to enact comprehensive mandate relief legislation that provides permanent and full funding of existing and future mandates and requires all legislation to include thorough local fiscal impact notes regarding the actual expense of implementing said legislation; and BE IT FURTHER

RESOLVED, that the Association of Towns calls upon the Governor and the Legislature to increase revenue sharing, program funding and technical assistance to localities.

Background

This issue was part of our 2017 Legislative Platform.

Mandate Relief

Unfunded mandates come in all shapes and sizes. Some mandates require local governments to perform a service; some require local governments to implement state/federal policies; some dictate the manner in which local government services or operations are provided; and some impose bureaucratic reporting requirements. Over the last few years, several bills have sought to fund or eliminate the enactment of new mandates, signifying state lawmakers' awareness of exactly how mandates exacerbate localities' abilities to operate and provide services. Even though these bills have yet to pass both houses, some gains have been made regarding procurement mandates; for example, local governments may utilize 'best value' bidding to allow greater flexibility and to piggy-back off of government contracts outside New York State. Although numerous state and federal commissions, councils, reports, executive orders, bills and recommendations regarding mandate relief have emerged in the last decade, there is more work to do.

Recent bills address the financial burden of state-mandated programs on local governments. A2295 (Morelle) would require the governor to periodically issue a reform plan to address unfunded state mandates on local governments and school districts. This legislation did not have a senate sponsor, nor did it advance out of the government operations committee. A1680 (Murray) requires fiscal notes on legislation and restores the Mandate Relief Council, but did not have a Senate sponsor and did not advance out of committee. A2922 (Brindisi) Same as S2323 (Griffo), which seeks to limit unfunded mandates on schools and local governments, passed the Senate but did not advance out of the Assembly Local Government Committee. A5289 (Galef),

which seeks to restrict the imposition of unfunded mandates on local governments, did not advance out of committee. A2556 (Lalo) sought a proposition to go before the voters to amend Article 9 of the New York State Constitution to address unfunded mandates but did not advance out of either the Assembly or Senate.

Revenue Sharing

Towns receive general revenue sharing (unrestricted aid) through the Aid and Incentive for Municipalities (AIM) program, which helps towns stabilize real property taxes. The Department of State's Local Government Handbook contains a good description of revenue sharing ([www.dos.ny.gov/lg/publications/Local Government Handbook.pdf](http://www.dos.ny.gov/lg/publications/Local_Government_Handbook.pdf)).

The 2017-18 State Budget maintained AIM funding at last year's levels – \$714.7 million for cities, villages and towns. Towns will share \$47.9 million or 6.7 percent of the total; villages will share \$19.7 million, or 2.5 percent; and cities will receive the rest. Although the governor has vocalized a desire to reduce the burden on property taxpayers through the tax cap and tax freeze programs, the executive/enacted state budget again undercuts that goal by underfunding a revenue sharing program already in place to reduce reliance on property taxes to fund local services. The last increase made to AIM was in 2008, a decade ago. Over that period, cities, towns and villages have lost \$1.2 billion due to inflation alone. Had AIM kept pace with inflation, the 2018 appropriation would have been for \$893 million, rather than the actual amount of \$715 million.

Resolution No. 4

Improve Cemetery Operations, Revenue and Abandonment Process and Address Local Impact

WHEREAS, there are approximately 1,800 regulated not-for-profit cemeteries in New York; and

WHEREAS, since 1990, more than 150 regulated cemeteries have failed; and

WHEREAS, 74 percent of New York's large cemeteries and 66 percent of New York's small cemeteries are underfunded; and

WHEREAS, pursuant to Town Law §291, towns are the only local government required to assume care for abandoned not-for-profit cemeteries; and

WHEREAS, the average cost to town taxpayers to maintain an abandoned cemetery is \$2,500 per acre; and

WHEREAS, towns are restricted regarding the authority to generate sufficient revenue to support town operations; **NOW THEREFORE BE IT**

RESOLVED that the Association of Towns calls upon the state to provide cemetery associations with more tools and resources to improve operations thereby avoiding dissolution; and to

improve the dissolution process to ensure that towns are given timely notice, proper funding assistance and resources to assist towns in the management and operations of abandoned cemeteries.

Background

This issue was part of our 2017 Legislative Platform.

Towns are required to care for abandoned nonprofit cemeteries within their borders (Town Law, §291). Counties, cities and villages are authorized but not required to assume responsibility of abandoned cemeteries (County Law, §222 [5-a]), Opns St Comp, 1987 No. 87-11; 1969 Op. Atty. Gen. No. 87) In addition to caring for traditional burial grounds envisioned in Town Law, §291, the Division of Cemeteries has begun to require towns to take over abandoned mausoleums and crematoriums, adding to the obligation and expense. Assuming the cost of abandoned cemetery upkeep can range from overwhelming for small towns and challenging for larger towns. The initial funding provided by the state to offset the cost of the takeover is insufficient to meet future costs, particularly when called upon to takeover mausoleums and crematoriums. The state needs to provide nonprofit cemetery corporations with more options to generate revenue and improve operations. By improving nonprofit cemeteries, they are less likely to dissolve and abandon their debts, liabilities and obligations to town taxpayers. Even with efficiencies and additional funding, some cemetery corporations will still become defunct. To help towns adequately prepare for this new obligation, towns should receive notification well in advance of when a cemetery corporation is at the point of abandonment. In addition, the state needs to provide continued funding to towns that take over abandoned mausoleums and crematoriums. Town Law §291 requires towns to mow the grass and secure the fencing of abandoned cemeteries; the needs and expenses associated with the care, maintenance and operation of an abandoned mausoleum or crematorium are well beyond the costs envisioned in section 291, and therefore, the state should provide additional and continuing funding assistance to these towns.

Resolution No. 5

Publication of Legal Notices

WHEREAS, an informed and engaged electorate is important to the governing process; and

WHEREAS, the electorate is notified of many local government actions via publication of legal notices in a paid daily or weekly newspaper as defined by Public Officers Law §70-a and General Construction Law, §60 (a); and

WHEREAS, studies show a decline in paid local daily and weekly newspaper readership; and

WHEREAS, New Yorkers are increasingly turning to alternative sources of news and information such as the Internet or free community newspapers for local news and information; and

WHEREAS, the intent of required public notice is to increase the likelihood that citizens are well-informed regarding local government actions, finances and plans; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls upon the Governor and the Legislature to amend the General Construction Law to allow publications having a widespread though unpaid circulation within the town to be considered newspapers and to permit towns and other local governments to place legal notices in these local publications; and BE IT FURTHER

RESOLVED, that the Association of Towns supports legislation allowing optional alternative media for publication of legal notices in order to improve citizen participation in and awareness of town programs and expenses.

Background

This resolution has appeared on the AOT legislative agenda in the past. The New York State Town Clerks Association expressed an interest in advancing this issue again in 2018.

State law requires publication of legal notices in a newspaper and establishes specific rules regarding what publications qualify as a “newspaper” for purposes of legal notice (General Construction Law, §60(a) and Public Officers Law, §70-a). Specifically, in order to be considered a “newspaper,” a publication must: (1) be in general circulation; (2) be established and ordinarily printed and distributed at least weekly for at least one year; (3) contain news, editorials and other matters of “current interest;” (4) have a paid circulation; and (5) be entered as second-class mail matter (Op. St. Compt. No. 94-9; Op. Atty. Gen. I No. 90-49). The rates charged by “newspapers” are set forth in Public Officers Law, §90-a (1).

Due to the narrow definition of “newspaper,” alternative publications, such as free weeklies or internet-based publications, are excluded from use for purposes of legal notice. Expanding the definition of a “newspaper” to include other types of publications could provide more notice to the public. Moreover, changes in the statutory rates could reduce the publication costs of public notices. In addition to expanding the definition of what publications qualify as newspapers for purposes of public notices and lowering the statutory publication rates, taxpayers could also save money by posting public notices on municipal websites at little or no cost to the taxpayer.

Resolution No. 6

Reform Inequities in the Property Tax Cap Formula

WHEREAS, the 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, is in place until June 2020; and

WHEREAS, the actual Property Tax Cap levy amount has been below 2 percent for five consecutive years; and

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

WHEREAS, other sources of revenue, such as state and federal aid, have remained stagnant while expenses continue to increase; and

WHEREAS, New York State has primarily provided real property tax relief through ad hoc property tax exemptions rather than comprehensive property tax reform, resulting in additional administrative and litigation costs and a tax shift rather than a tax reduction; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls for tax cap program reforms such as exemptions for expenditures that improve public safety, invest in local infrastructure, address emergencies, acquire and develop open space, result from capital improvements mandated by government agencies' consent orders, and invest in municipal infrastructure to enhance economic capacity and community development; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the state to examine and report on the property tax cap's impact on local government operations and infrastructure.

Background

This issue was part of our 2017 Legislative Platform.

The 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 adopted in 2011 and will expire in 2020. The allowable growth levy has been less than 2 percent for the last five years – (<https://www.osc.state.ny.us/localgov/realprop/pdf/levygrowth-chart071417.pdf>).

The law has a formula to calculate the levy limit that already considers a few statutory exemptions (tort judgments, pension costs and transfers of functions), credits from previous years and payments in lieu of taxes (PILOTs). Towns have identified some additional exemptions that should be included in the levy calculation that would still offer taxpayers relief and allow towns to improve local services and maintain local infrastructure. In addition, this resolution requests that the state examine the impact the tax cap has had on local services and infrastructure.

Resolution No. 7

Continue Town-Initiated Intermunicipal and Shared Service Agreements

WHEREAS, the state Legislature recently enacted two shared services and efficiency programs as part of the state budget, specifically the Countywide Shared Services Property Tax Savings Plan and Tax Freeze Efficiency Program; and

WHEREAS, towns have the authority under General Municipal Law Article 5-G to share services and have been doing so for generations well before these programs were enacted; and

WHEREAS, towns are fiscally responsible, and over the course of decades, have realized significant savings of taxpayer money from sharing services; and

WHEREAS, launching state shared services programs requires time and resources that may be better spent by towns to provide services; **NOW THEREFORE BE IT**

RESOLVED, that in keeping with towns' longstanding practice of saving taxpayer money through shared services, the Association of Towns calls on the Governor and state Legislature to encourage and support town-initiated shared services and intermunicipal cooperation without state mandates or restrictions.

Background

This is a new resolution requested by the Executive Director.

In 2014, the Tax Freeze Program was adopted as part of the state budget, and in 2017, the adopted state budget included the Countywide Shared Services Property Tax Savings Plan. Both of these programs intended to incentivize sharing services among local governments with the argument, as articulated by the governor, that sharing services will reduce real property taxes.

Under the Tax Freeze Program, more than 1,300 local governments are currently implementing efficiency plans to save more than \$522 million in 2017 and a projected \$1.6 billion by 2020. By some estimates, the Countywide Shared Services Property Tax savings plan will have a projected \$208 million in savings for 2018, although \$130 million of that projection comes from a single project in Nassau County, and the proposals have to be implemented for the savings to be realized.

According to OSC, local governments have generated \$18.4 billion in shared services revenue since 1996. Over the last 20 years, towns alone have taken in more than \$3.2 billion in revenue from shared services (see Office of the State Comptroller, AUD data set 1996 – 2016).

Resolution No. 8

Preserve and Strengthen Home Rule

WHEREAS, since 1894, the Constitution has granted broad home rule powers to local governments and placed corresponding restrictions on the state Legislature to preserve these powers; and

WHEREAS, home rule powers encompass a wide range of subjects, including but not limited to: the power to adopt, amend and repeal local laws in the exercise of its functions, powers and duties; the power to share services and cooperate with other local governments; the power to acquire real and personal property for its corporate purposes; the power to establish recreational facilities; the power to dispose of its real and personal property; the power to levy and collect rents and/or penalties in a city, village or town; the power to adopt, amend and repeal zoning regulations; and the power to perform comprehensive or other planning work relating to its jurisdiction; and

WHEREAS, these powers are to be liberally construed (Mun. Home Rule Law §51; N.Y. Stat. Local Gov. §20(5)); and

WHEREAS, the exercise of these powers permits local governing bodies to meet the unique and diverse needs of local residents while fostering citizen participation and grassroots involvement 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 New York 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 upon the Governor and the Legislature to preserve and strengthen home rule; and BE IT FURTHER

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

Background

This issue was part of our 2017 Legislative Platform.

Home rule is a method by which a state government can transfer a portion of its governmental powers to a local government, providing localities with autonomy in the management of their own affairs, the objective being a more equitable and efficient allocation of duties and rights between the state and its local governments. The evolution of home rule occurred over the span of several decades. Cities, counties and some villages all received home rule powers before towns. Towns received home rule powers with the adoption of the 1963/1964 constitutional

amendments. Unfortunately, through a series of court cases and legislative enactments, the state has weakened local home rule powers by finding that local governments are pre-empted by the state regarding areas of local concern. This resolution seeks to preserve and strengthen home rule by affording town governments the authority needed to serve New Yorkers who live and work in towns.

Resolution No. 9 ***Sales Tax Distribution***

WHEREAS, sales taxes represents an important source of revenue that many towns use to help defray the rising costs of providing services or mitigate property tax increases at the town or county level; and

WHEREAS, counties are authorized by Article 29 of the New York State Tax Law to impose a tax on the sale of certain goods; and

WHEREAS, a county legislature has the option of using all or a portion of its sales tax revenues solely for county or education purposes, or it may apportion some between its towns and cities (Tax Law, §1262); and

WHEREAS, a county legislature is additionally authorized to make an agreement with any city or cities in the county to allocate a specific portion of these revenues to such city or cities; and

WHEREAS, cities have the right to pre-empt application of the county sales tax and impose their own local sales tax; and

WHEREAS, towns do not yet enjoy the right to levy their own local sales tax, pre-empt the in-town application of the county sales tax or require the county to negotiate a sales tax allocation agreement; and

WHEREAS, local sales taxes are generally levied at the county level, and sales tax proceeds are distributed to other units of government within county boundaries in accordance with local sharing agreements entered into at the discretion of the county; and

WHEREAS, in counties where the county shares sales tax with towns, towns can receive their sales tax distribution in one of three ways: (1) as an offset to reduce county property taxes levied in a town; (2) in cash, or (3) a combination of the two; and

WHEREAS, the state has imposed a real property tax levy cap on all municipalities, effectively limiting the ability of the towns and villages to keep pace with the rising costs of employee health insurance, retirement system costs and other expenses and increasing the need for towns to rely on alternative revenue sources such as sales taxes; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls upon the Governor and the state Legislature to amend the New York State Tax Law to require county governments governed by separately elected legislators to share sales tax revenue with towns and to negotiate sales tax allocation formulas with towns; and BE IT FURTHER

RESOLVED, that non-negotiated changes to a county sales tax allocation formula be subject to a permissive referendum.

Background

The Town of Glenville, Schenectady County has requested the inclusion of this resolution, which was part of the 2011 Legislative Platform.

Counties and cities have the authority to levy local sales taxes, but towns do not (Tax Law, §1262; Opns St Comp, 1990 No. 90-39; 1976 N.Y. Op. Atty. Gen. No. 280). Counties are authorized to share sales tax revenue with towns and other municipalities at their discretion unless there is a city within the county that opts to collect its own sales taxes; in which case, the county must then share sales taxes with the towns within the county (Tax Law, §1262; OSC report “Local Government Sales Taxes in New York State” March 2015). Not only do towns lack the statutory authority to levy a local sales tax or negotiate a sales tax allocation agreement, they also lack standing to challenge the county sales tax allocation formula or lack thereof (Tax Law §§1210, 1212, 1262; *Havranek v. Mathews*, 160 A.D.2d 1207, 555 N.Y.S.2d 467 (3d Dep’t 1990)).

Towns have advocated for a change in the state Tax Law to require the mandatory distribution of county sales tax with towns. Although not achieved on a statewide basis, there have been various amendments to Article 29 of the state Tax Law requiring some form of sharing of county sales tax with towns. For example, Tax Law §1262-e requires Nassau County to establish a local government assistance program for Nassau County towns and cities to minimize real property taxes and other listed expenses. In addition, Tax Law §1262-b requires Westchester County to share some sales tax revenues with the cities and towns at a specified rate. Finally, Tax Law §1262-a requires Tompkins County, in specified circumstances, to share a certain percentage of sales tax with the towns in the county.

Resolution No. 10 ***Local Hotel Occupancy Taxes***

WHEREAS, towns do not have the authority to impose a hotel or motel occupancy tax on room rentals within their jurisdiction; and

WHEREAS, a hotel or motel occupancy tax would provide an additional revenue source that would alleviate towns’ reliance on real property taxes to fund town services and operations; and

WHEREAS, the governor and the New York State Legislature support the reduction of real property taxes; and

WHEREAS, the Governor has stated that he will consider a comprehensive and determinative statewide policy advanced by the Legislature to authorize additional municipalities to impose local hotel/motel occupancy taxes; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls upon members of the New York State Legislature to adopt legislation authorizing all municipalities to adopt local laws to impose an optional hotel/motel occupancy tax.

Background

This is a new resolution introduced at the request of the supervisor of the Town of Dickinson, Broome County.

A hotel/motel occupancy tax, also commonly referred to as a bed tax, is a charge that a municipality can place on room rentals within their jurisdiction. However, in order to impose an occupancy tax, municipalities need special legislation authorizing them to do so (see NYS Constitution Article XVI §1; *Baldwin Union Free School Dist. v County of Nassau*, 22 NY3d 606 [2014]; Opns St Comp No. 83-218).

Counties and cities primarily have the authority to impose occupancy taxes, though a small number of towns successfully adopted special legislation. However, several towns have had legislation vetoed by Gov. Andrew Cuomo because, as stated in his veto message, he believes the authority to impose this tax should be a comprehensive, statewide policy established by the Legislature, not a piecemeal process. The Assembly has shown some interest in the issue and included a program creating a uniform hotel/motel tax program in its one house budget bill, but it was not included in the final state budget.

Resolution No. 11

Reform the Real Property Tax System

WHEREAS, towns heavily rely on real property tax revenues to fund important government services; and

WHEREAS, New York's real property tax burden is among the highest in the nation, and contributes to a decline in the standard of living and economic vitality across the state; and

WHEREAS, a contributing factor to high real property taxes is the volume of legislation passed each year granting particular property owners and not-for-profits either partial or full exemptions from payment of real property taxes and relief from established taxable status dates; and

WHEREAS, the manner in which condominiums, cooperative housing and certain multifamily dwelling units are assessed further contributes to high real property taxes in this state; and

WHEREAS, it is essential that the cumulative long-term impact of real property tax exemptions be addressed in New York, particularly in light of the continued erosion of real property tax bases resulting from the above practices; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls upon the Governor and the Legislature to identify and enact a uniform, well-defined approach to exemption and taxable status date legislation and provide state funding for any state-mandated or state-encouraged exemption programs in the name of protection of local property tax revenues.

Background

This issue was part of our 2017 Legislative Program.

The Association of Towns' legislative agenda often includes one or more resolutions devoted to addressing issues with our real property tax system. This resolution focuses on issues surrounding exemptions generally, including the sheer number of exemptions that continue to be enacted annually, as well as the administration of the exemption program.

One reason New Yorkers pay among the highest real property taxes in the nation is due to the state's real property assessment methods; most notably, the tendency to provide favored status to certain properties to the detriment of others. Indiscriminate property tax exemptions have now removed 31 percent of all New York State real property from the tax rolls, meaning local governments must raise the same amount of money for the provision of services from a markedly smaller tax base. Property tax exemptions shift the tax burden to other taxpayers, who endure the double whammy of having to fund the administration of this complicated system of property tax exemptions.

Even though real property taxes fund 43 percent of local government revenues and nearly 50 percent of town revenues, the Legislature annually introduces hundreds of bills to provide for more real property tax exemptions to both private parties and not-for-profits. Numerous legislative hearings, bills and proposals have been devoted to the issue of real property tax reform, but to date, we can report no measurable improvements in the area of property tax exemptions.

In late 2016, *Gannett Newspapers* published an in-depth series about property tax exemptions in New York State. Specifically, as summarized by Frank Scandale, investigations editor for *The Journal News*, the investigation found that:

- *Statewide: 31 percent of New York's land value is tax exempt. Of its \$2.8 trillion in land value, about \$866 billion of it never gets billed,*

forcing local governments to shift the tax burden of hundreds of billions of dollars in equalized value onto non-exempt taxpayers.

- *Religious groups: The value of religious groups' land bypassed for taxation has nearly doubled from \$14 billion in 1999 to \$26 billion in 2015.*
- *Hospitals: Nonprofit hospitals' tax-exempt property increased in value from \$13.1 billion to \$22.7 billion over the past 16 years. Sixteen hospitals and health systems had \$2.6 billion invested in the Caribbean, Central America and other foreign countries in 2014 alone.*
- *State land: New York pays tax on 90 percent of the 4 million acres it owns. The other 10 percent illustrates a mix exposes a patchwork system of ad hoc deals that is dependent, in part, on who had the political juice to forge a deal.*
- *Industrial development agencies: More than 4,600 deals granted more than \$1 billion in sales and property tax exemptions in 2014, but a state report found "little correlation" between private-sector job growth and IDA projects.*
- *Colleges: State University of New York schools own \$10 billion worth of land, which would have yielded \$316 million annually in tax payments if not exempted. Nonprofit educational organizations, including private colleges and universities, if taxed, would have generated \$1 billion last year.*

Given the enormity of the assessed value of exempt properties, along with financially crippling property taxes in New York State, public policy mandates that the governor and Legislature enact a uniform approach to exemption and taxable status date legislation. A uniform approach can break the cycle of the systemic erosion of New York's tax base and provide for a more equitable real property tax system.

Resolution No. 12

Eliminate the "Dark Store Theory" as a Valuation Method to Reduce Real Property Tax Assessments

WHEREAS, Real Property Tax Law, §305 requires real property to be assessed at a uniform percentage of value in each assessing unit; and

WHEREAS, the owners of real property in New York State are assessed on their property as it existed on the applicable taxable status date; and

WHEREAS, assessors use three approaches in valuing real property, including the cost approach, the income approach and the sales approach; and

WHEREAS, a fair and uniform indicator of property value useful in assessment is the sale of a similar-use, comparable property; and

WHEREAS, there is a national trend to use the “Dark Store Theory” when assessing “big box” real property parcels; and

WHEREAS, the Dark Store Theory relies on the use of shuttered, deed-restricted and abandoned properties that are in no way comparable to lighted stores; and

WHEREAS, the real estate tax revenue that would have been generated from a properly assessed “dark store” will be shifted and redistributed to the remaining taxpayers within the jurisdiction, increasing their tax burden; and

WHEREAS, big box retailers require local governments to extend public services and infrastructure and should be assessed accordingly; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls upon the governor and state Legislature to adopt legislation prohibiting use of the dark store theory as a valuation method in real property assessment.

Background

This resolution was requested by the Town of Ulster, Ulster County.

In recent years, a trend has proliferated among “big box” stores to challenge their real property assessment using the “dark store theory.” That is, retailers such as Lowe’s and Target have challenged their assessments on the grounds that the property’s value should be taxed at the rate of comparable properties that include vacant and abandoned lots that formerly housed big box stores but have since gone “dark.” Essentially, there are few comparable sales to use to establish the value of the property, and big box stores assert that those dark properties should be included in their assessment valuation. In Michigan, Lowe’s used this theory to successfully reduce its assessment from \$10.4 million to \$3.5 million, requiring the town to refund back taxes of \$755,828 over a three-year period (see *Lowe’s Home Centers, Inc. v. Township of Marquette*, 2014 WL 1616411).

In response to the potential proliferation of reduced assessments, Indiana adopted legislation in 2015 that required assessors to value big box retailers using the cost method and preventing the use of dark store comparisons. Similar legislation is pending in Michigan. Big box retailers in New York state have started to contest their assessments using the dark store theory; there is concern that this practice will be accepted statewide. Allowing for the dark store theory on big box property owners would result in a lower assessment for such property owners, meaning lower taxes for the commercial big box property owners. The reduction in assessment would unfairly shift the property tax burden to all other taxpayers in the jurisdiction. Accordingly, it is necessary

to evaluate the issue and ensure that the dark store theory method of assessment is stopped before it becomes prevalent in New York.

Resolution No. 13

Preserve and/or Restore Real Property Tax, State Income Tax and Mortgage Interest Federal Income Tax Deductions

WHEREAS, New York State taxpayers have relied upon deductions from federal income tax for state income tax, real property taxes and mortgage interest since the inception of the tax code; and

WHEREAS, the ability to deduct state income taxes, real property taxes and mortgage interest enables and encourages homeownership, creating cohesive communities that attract businesses and residents to New York's towns; and

WHEREAS, increased federal taxation and the resulting reduction in municipal services will harm local housing markets, decrease home values, erode local tax bases and accelerate residential and business flight from New York; and

WHEREAS, the elimination or narrowing of the state and local tax deductions would result in a form of double taxation on New Yorkers and impose fiscal stress on taxpayers and local governments; and

WHEREAS, the President and Congress have proposed legislation to significantly reduce state and local tax deductions; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls upon the New York congressional delegation to fight to preserve and/or restore deductibility of state income tax, real property taxes and interest paid on mortgages.

Background

This resolution was requested by the Town of Hopkinton, St. Lawrence County and Executive Director Gerry Geist. In addition, this issue was part of the 2013 Legislative platform.

New York State taxpayers have relied upon the State and Local Tax (SALT) deduction since the official inception of the income tax code in 1913. Prior to the Tax Cuts and Jobs Act (H.R. 1), taxpayers that itemized their deductions could deduct local real property taxes, state income taxes and mortgage interest from their federal income when calculating taxable federal income, thereby resulting in a reduced tax liability. The SALT deduction reduced the tax burden felt by all New York taxpayers.

With the Tax Cuts and Jobs Act (H.R. 1), both the Senate and the House of Representatives significantly reduced the SALT deduction. Specifically, both the Senate and House of Representatives' tax reform bills limit state income tax, sales tax and real property tax deductions to \$10,000 cumulatively.

The SALT deduction is essential for New York taxpayers. In 2015, more than 3.3 million households in New York claimed the SALT deduction, at the highest average of any state in the country at around \$24,000. Reducing the SALT deduction and including state and local government real property tax payments in one's taxable federal income results in double taxation and destroys a fundamental principle of federalism, as one is paying federal taxes on their state and local tax payments. The reduction of the SALT deduction and the subsequent cost shift from the federal government onto local governments will result in decreased revenue for essential municipal services and an acceleration of residential and business flight out of New York to states that do not impose such a high tax burden.

Towns provide a significant number of essential services, including police protection, critical infrastructure improvements, emergency medical services, solid waste disposal, fire protection, refuse pickup and highway maintenance, among others. More often than not, the only avenue to raise revenue is through real property taxation. Limiting the ability to generate revenue through taxation by eliminating and modifying the SALT deduction will only further impede a local government's ability to provide cost-effective, essential services to its residents. Moreover, the SALT deduction encourages homeownership; the elimination of this essential tax break will likely have a chilling effect on homeownership in New York.

Resolution No. 14
Preserve Federal Income Tax Exemption for
Interest Earned on Municipal Bonds

WHEREAS, New York municipalities rely upon the issuance of bonds, notes and other financial instruments to finance public improvements and capital projects that are essential to the welfare of our communities; and

WHEREAS, federal income tax exemptions on municipal bonds lower taxpayer costs in the finance of safe roads, reliable mass transit, playgrounds, clean drinking water systems and wastewater treatment systems; and

WHEREAS, New York taxpayers benefit from the federal tax-exempt status of interest earned on municipal bonds due to lower interest rates and a robust bond market; and

WHEREAS, the municipal bond market infused \$44 billion into the New York economy in 2016, creating or preserving jobs in the construction, finance, manufacturing and retail markets; and

WHEREAS, interest earned on municipal bonds has been exempt from federal income taxes for more than a century, enhancing local communities and bolstering the economy; and

WHEREAS, the President and Congress have proposed legislation to alter the federal tax-exempt status of interest earned on certain municipal bonds; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls upon the New York congressional delegation to preserve the federal tax-exempt status of interest earned on municipal bonds.

Background

This issue was part of our 2013 Legislative Platform and was requested by Executive Director Gerry Geist to be included in our 2018 Legislative Platform.

Historically, the interest that municipalities pay to their debtholders has been exempt from taxation. Proposals made in the several weeks leading up to the vote on the Tax Cuts and Jobs Act (H.R. 1) eliminated or reduced the tax deductibility of the interest earned on certain municipal obligations. Specifically, the House and Senate tax reform bills eliminated the option to issue tax-exempt bonds to advance refund any outstanding tax-exempt bonds. Local governments use advance refundings to achieve debt service savings, restructure debt service or to free up existing funds. Similar to refinancing a mortgage to obtain a better interest rate or to restructure payments, an advance refunding allows a local government to issue new debt to pay off or refund old debt more than 90 days in advance of its first call date (the first date a local government has to redeem a bond before maturity).

In 2016, New York State issued \$44 billion in new municipal debt, representing 9.7 percent of use nationwide and making New York the third largest issuer of municipal debt in the country. New York's municipalities rely on the funds generated by these obligations to undertake public improvement and capital projects that are essential to the welfare of the community, including:

- Water and sewer infrastructure and treatment facilities
- Local roads
- Public facilities such as fire houses and hospitals
- Equipment and apparatus for emergency responders

The preferential tax treatment that municipal bonds receive directly and materially benefits New York's local governments, creating lower borrowing costs due to the lower interest rates they have to pay on the bonds. In turn, it lowers the overall cost of the purchases, vital capital projects and infrastructure improvements of the local government, and ultimately, the real property taxpayers.

With the reduction or all-out elimination of the tax-exempt status of these bonds, towns and other local governments in New York will see cost increases as a direct result of the higher interest rates that taxable bonds command. These higher borrowing costs are compounded by

the tax cap, which does not exclude debt service from its fiscal constraints. As a result, every dollar under the tax cap devoted to debt service is a dollar that cannot be spent on other essential services that the local government must offer. Ultimately, it will be the taxpayers who suffer the most from the loss of this exemption, as it will lead to either higher real property taxes or cuts in the services that they already receive.