



2020 Proposed Legislative Program

As Reported by the Resolutions Committee of the Association of Towns

*Rebecca Haines, Town Clerk, Town of Ellery, Chautauqua County,
First Vice President, Association of Towns, Chair of the Resolutions Committee*

1. Preserve and Support Home Rule
2. Support and Fund Local Roads, Bridges and Highway Operations
3. Support Town Services and Operations by Increasing State Aid, Authorizing New Local Revenue Sources and Evaluating Mandates
4. Support the Expansion of Cellular and Broadband Service while Preserving Local Authority
5. Amend and Fund Criminal Justice Reforms
6. Share Potential Cannabis Revenue and Support Local Option
7. Comprehensive Real Property Tax Reform
8. Support Optional, Town-Initiated Justice Court Restructuring
9. Support Municipal Recycling Programs
10. Support Ways to Reduce Municipal Health Benefit Costs

2020 Proposed Legislative Program

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 upon the Governor and the 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 a carryover from AOT's 2019 Legislative Program.

This resolution seeks to preserve and strengthen home rule and afford town governments the authority and autonomy needed 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, pre-empting towns from acting on areas of local concern.

Resolution No. 2 Support and Fund Local Roads, Bridges and Highway Operations

WHEREAS, local roads and bridges are the backbone of our transportation system, the repair and maintenance of

2020 Proposed Legislative Program

which are primarily funded by real property tax; and

WHEREAS, various studies and organizations have identified significant transportation funding needs in New York State; and

WHEREAS, “Fixing America’s Surface Transportation (FAST),” a federal program established to provide funding for state and local infrastructure projects, is set to expire in 2020; and

WHEREAS, long-range capital planning is essential to providing a safe and modern transportation system, to properly maintain and fund highway equipment, and to budget appropriately; and

WHEREAS, the current NYSDOT capital plan, a report used to prioritize municipal improvements, establish preventive maintenance cycles, and to identify both anticipated costs and sources of revenue for needed improvements, is scheduled to expire in 2020; and

WHEREAS, statutorily empowering local highway superintendents, town boards and engineering professionals to make decisions regarding the required maintenance, reconstruction and construction of local low-volume and minimum maintenance roads would reduce costs and allow towns to better prioritize and fund repairs and maintenance; 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; and

WHEREAS, towns’ ability to participate in long-range capital planning is limited due to statutory restrictions on the amount that they can annually levy to fund highway equipment purchases without engaging in the expense of a referendum; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls on the Governor, the Legislature and the New York State Department of Transportation to enact a new five-year capital plan that includes local roads, bridges and culverts and the appropriate funding for the Consolidated Highway Improvement Program (CHIPS), PAVE-NY, BridgeNY and other local funding programs; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor and Legislature to increase the base funding for CHIPS, PAVE-NY and BridgeNY; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the New York Congressional Delegation to renew the federal FAST Act and provide an increased and dedicated funding commitment to local and state transportation infrastructure projects without it being used to offset existing funding; and BE IT FURTHER

RESOLVED, that the Association of Towns supports amending the Highway Law, as recommended by the NYS Local Road Classification Task Force, to authorize localities to make local road classifications; and BE IT FURTHER

RESOLVED, the Association supports amending Highway Law § 271 to authorize towns to increase the amount of taxes they can levy annually without the expense of a referendum to purchase highway equipment.

2020 Proposed Legislative Program

Background

This resolution is modified from the highway administration resolution included in AOT's 2019 Legislative Program to include a call for the new NYSDOT capital plan to address local roads and bridges and drafted from a resolution from the Supervisors Forum of Erie County.

Five-Year Capital Plan and Funding: The current five-year NYSDOT Capital Program is set to expire in 2020. It currently includes two short-term local funding programs (PAVE-NY and BridgeNY) that supplement the long-standing Consolidated Highway Improvement Program (CHIPS), which provides dedicated quarterly state funding to towns for local highways and bridges. The 2019-2020 State Budget included \$100 million for the PAVE-NY program, \$100 million for the BridgeNY program; \$39.7 million for the Marchiselli Program and \$438.1 million for CHIPS. There is also the Extreme Winter Recovery Fund, which was initially omitted from the state budget but was included at the end of session and funded at \$65 million.

Local governments are responsible for the maintenance and care of nearly 90 percent of New York's roads and bridges. In 2013, the New York State Association of Town Highway Superintendents released a 20-year needs assessment of local highway and bridge infrastructure, estimating that over the next 15 years, local pavement needs will total \$31.95 billion, and local system bridge needs will total \$2.85 billion. According to this study, local governments should be receiving an additional \$1.3 billion annually in highway funding to address the need and usage patterns. Additionally, the New York State Comptroller's Office estimates that local governments should be spending \$2.3 billion annually on roads and bridges.

Given that towns are responsible for so many of New York's roads and bridges and current funding levels fall short of their needs, it is critical to increase funding projections for CHIPS, PAVE-NY, Bridge-NY and EWR in the new NYSDOT capital plan. Furthermore, while increased funding for local roads and bridges through new short-term programs, such as PAVE-NY and BridgeNY, is appreciated, these are supplemental programs and not replacement programs for CHIPS.

New York also receives funding from the federal FAST Act, which is set to expire in 2020. The FAST Act provides \$305 billion in transportation funding nationwide over a five-year period. Renewal of this program is critical for the construction and maintenance of New York's transportation infrastructure. We also support direct federal funding to towns in addition to the distribution of federal funding to state departments of transportation.

Statutory Support for Local Low-Volume and Minimum Maintenance Roads: Designating roads as low-volume or minimum maintenance helps reduce costs for rural roads. In the absence of express statutory authority, many towns have adopted local road standards by local law. The need for state legislation has become more important as some lower courts have found that these locally adopted road standards that include limits on snowplowing services on minimum maintenance roads are inconsistent with seasonal limited-use road designations under Highway Law § 205-c (see *Weikel vs. Town of West Turin et al* Index No. CA2015-0411; Supreme Court Lewis County [March 24 2016] reversed on statute of limitations grounds 162 A.D.3d 1706 [4th Dept. 2018]). Legislation to formally codify the authority and procedure to designate low-volume and minimum maintenance roads (see e.g. A418 Gunther [MS]; same as S2537 Griffo) has not been successfully passed, despite fervent support from several organizations.

Increasing levy cap on equipment funding: Highway Law § 271(3)(a)(4) places a \$60,000 limit on how much

2020 Proposed Legislative Program

towns, absent special legislation, can annually levy and collect to fund purchases of various highway equipment and tools. The limitation is on the amount that can be raised by taxes, not the amount towns can spend (see Opns St Comp No. 82-172). The town board can hold a referendum to increase the \$60,000 limitation by referendum, but this is an additional expense for the town. The New York State Association of Town Superintendents of Highways is seeking an increase in the taxing threshold to support the purchase of needed highway equipment.

Resolution No. 3

Support Town Services and Operations by Increasing State Aid, Authorizing New Local Revenue Sources and Evaluating Mandates

WHEREAS, towns are heavily dependent on real property taxes to fund town services and operations; and

WHEREAS, towns have limited sources of revenue and are excluded from some currently afforded to cities, counties and villages, such as hotel occupancy taxes, sales taxes and gross receipts taxes; and

WHEREAS, towns have been forced to take measures like cutting services, reducing the workforce, and delaying much needed repairs to municipal water and sewer systems, stormwater facilities and other infrastructure in an attempt to stay under the 2 percent tax cap; and

WHEREAS, unrestricted state aid provided to municipalities through AIM was eliminated and replaced by county sales tax for 90 percent of towns in 2019, and the state revenue sharing that still exists has not been increased in over a decade; and

WHEREAS, state and federal unfunded mandates increase the cost to provide local services; and

WHEREAS, the Governor and the New York State Legislature support the reduction of real property taxes and having other sources of funding, and increases to state funding assistance would reduce localities' reliance on property taxes; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls on the state Legislature and the Governor to support town services through means such as, but not limited to, providing and increasing unrestricted state aid and providing dedicated infrastructure funding; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor and the Legislature to enact legislation providing towns with more revenue sources, like having the option to impose a local hotel or motel occupancy tax, sales taxes and gross receipts taxes; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor and the Legislature to require thorough local fiscal impact notes that evaluate the cost of implementing legislation affecting towns and to provide funding and resources to cover those costs.

2020 Proposed Legislative Program

Background

This resolution combines several resolutions included in AOT's 2019 Legislative Program and was submitted by the Supervisors Forum of Erie County.

Towns face an increasing number of financial hurdles. Real property tax is the primary source of revenue for towns and funds most town services; however, towns are encouraged to stay under a state-imposed 2 percent tax cap all while being asked to do more by the state, provide essential services in the community, and manage and repair crumbling infrastructure. Therefore, this resolution asks for three funding-related items that would support town services and operations and help reduce property taxes while improving the standard of New York living.

Provide for and increase state funding for towns: The 2019-2020 state budget eliminated AIM for 90 percent of towns and replaced it with "AIM-related payments" funded by county sales tax, and those towns who continued to receive AIM saw no increase. Furthermore, towns provide critical water and sewer services, but our infrastructure is in dire need of repair and is grossly underfunded – the Department of Health estimates \$38 billion of repairs for drinking water infrastructure over the next 20 years to protect the public health and that 25 percent of wastewater treatment facilities are currently operating beyond their 30-year life expectancy. The Department of Environmental Conservation also reported that it would cost \$36.2 billion over 20 years to repair, replace and update New York's aging wastewater infrastructure. More support from the state – either unrestricted aid or funding earmarked for infrastructure – will be needed if towns are to continue to be able to provide uninterrupted services and make crucial infrastructure improvements without relying so heavily on property taxes.

Authorize new revenue sources for towns: Counties, cities and villages *all* have revenue-raising abilities available to them that towns do not, including hotel occupancy taxes, sales taxes and gross receipt taxes. A hotel/motel occupancy tax, commonly referred to as a bed tax, is a charge that a municipality can place on room rentals within its jurisdiction. However, towns need special legislation giving them the option to impose an occupancy tax (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). Most towns that request such legislation are denied, as the governor has evinced a preference for comprehensive tax reform rather than a piecemeal approach. Moreover, counties and cities have the authority to levy local sales taxes, but towns do not (Tax Law § 1262; Opns St Comp No. 90-39; 1976 N.Y. Op. Atty. Gen. No. 280), and counties are not required to share sales tax. Finally, cities and villages have the authority to impose a local gross receipts tax, which is a tax on the sale of utility services originating and terminating within their jurisdiction. *For purposes of this tax, a utility is defined as* "any person ... subject to the supervision of the state department of public service ... who sells gas, electricity, steam, water or refrigeration delivered through mains, pipes or wires ..." Authorizing these or any new revenue sources for towns would certainly lessen the need to rely on real property taxes to fund town services.

Require Fiscal Impact Notes: Unfunded mandates pose a significant burden to municipal budgets, and new mandates making budgeting particularly difficult. Over the last few years, several bills have been introduced addressing unfunded state mandates, signifying state lawmakers' awareness of exactly how mandates hinder a municipality's ability to operate and provide services; however, none have been successful to date.

2020 Proposed Legislative Program

Resolution No. 4

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, a lack of access to broadband Internet service and cellular service may depreciate property values; 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 pre-empt 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 the time it takes to review applications as well as the ability to tax telecommunications infrastructure as real property.

Background

This resolution combines various resolutions included in AOT's 2019 Legislative Program.

This resolution looks to maintain the local authority of towns as they grapple with various issues associated with the telecommunications industry, while also encouraging cellular and broadband development. For example, In *T-Mobile Northeast, LLC vs. 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 trying to circumvent this ruling but ultimately stalled in the Assembly (see A8201/S6511). In September 2019, Assemblywoman Sandy Galef, chair of the Committee on Real Property Taxation, requested that NYCOM, NYSAC, AOT and the NYS Assessors Association meet with various industry representatives to see if there was a mutually agreeable way to promote broadband and cellular development without unfairly depleting the tax base or pre-empting local government. A meeting took place on November 21, 2019 with another scheduled for December 10, 2019.

2020 Proposed Legislative Program

Furthermore, there is a 2019 FCC order currently being litigated in the 9th Circuit that is an attempt to speed up 5G cell service deployment. The order significantly affects small cell antennas in the streets and rights-of-way, leases for cell towers on municipal property generally, shot clocks, and fees charged for cell tower zoning and permitting. Although ostensibly aimed at 5G service, the rules cover all cell sites nationwide. A similar proposal was included at the state level in the 2018 Executive Budget, so this resolution looks to stop state initiatives to institute the FCC order should it fail in court.

Resolution No. 5 Amend and Fund Criminal Justice Reforms

WHEREAS, the state budget enacted in 2019 included substantial criminal justice reforms, such as eliminating monetary bail for a significant number of criminal charges, and requiring prosecutors and police to turn over relevant evidence within 15 days of arraignment; and

WHEREAS, these reforms apply to misdemeanors and violations, including certain code violations, greatly impacting many town departments and services, including but not limited to police, code enforcement, town prosecutors and town justice courts; and

WHEREAS, there are administrative and implementation expenses towns will incur in complying with these reforms; and

WHEREAS, the state budget did not include any targeted funding for town compliance with these criminal justice reforms; and

WHEREAS, many of the criminal charges for which bail may not be set pose a significant threat to the health, safety and welfare of the community, such as but not limited to, making a terroristic threat, promoting a sexual performance by a child, criminal sale of a controlled substance to a child, criminal possession of a weapon on school grounds, first-degree aggravated harassment and third- and fourth-degree arson, aggravated cruelty to animals, and torturing and injuring animals; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls on the Governor and Legislature to amend Criminal Procedure Law to exempt the new discovery laws from applying to code violations and to extend beyond 15 days, the time during which discovery must be produced; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor and Legislature to amend the CPL to include more criminal charges with the list of qualifying offenses for which bail may be set, specifically those that pose a danger to the safety of the public and individuals; and BE IT FURTHER

RESOLVED, that the Association of Towns requests New York State to provide and support funding for towns to comply with criminal reform requirements through, but not limited to, increasing justice court fees, increasing JCAP grants or any other monetary assistance.

Background

2020 Proposed Legislative Program

This is a new resolution submitted by the towns of Glenville and Claredon.

The 2019-2020 state budget imposed sweeping criminal justice reforms, including eliminating monetary bail for non-qualifying offenses (misdemeanors and non-violent felonies) and revising discovery requirements (See State Budget Part JJJ-LLL).

With respect to bail, previously judges and justices were authorized to use bail as a way to secure a defendant's court appearance at a later date, but under the new laws, defendants charged with non-qualifying offenses must be issued an appearance ticket with a return date of no later than 20 days, and released on their own recognizance or released under the "least restrictive non-monetary conditions." The court must send a reminder about the appearance date, and if a defendant fails to appear, another appearance ticket must be issued. After repeated failures, a court may issue a bench warrant after waiting a period of 48 hours and providing notice to the defendant and defense counsel. In addition to increased administrative costs for municipalities due to the new notification requirements and the possibility that court will have to be held more frequently to comply with the deadline on return dates for appearance tickets, concerns regarding what effect eliminating bail and restricting bench warrants will have on the reliability of defendants' appearances and public safety in general.

As for the new discovery reform requirements, prosecutors must disclose "all items and information that relate to the subject of the case and are in the possession, custody, or control of the prosecution," including those in police possession, no later than 15 days after an arraignment on an indictment. Towns have the option of imposing civil or criminal penalties for code violations (see Town Law § 267), and the new law is written in such a way that it applies to code violations with criminal penalties as well as other misdemeanors prosecuted in town court. Thus, for example, within 15 days after an arraignment on a code violation, a code enforcement office is required to turn over evidence to defendant. This also applies to police and town prosecutors, fueling concerns that towns and other jurisdictions do not have the resources to comply with these rules, and as a result, otherwise valid cases will be thrown out on a technicality.

To address these concerns, this resolution asks the state to extend the types of crimes for which a judge or justice may set bail, extend the time period allowed to turn over evidence, specifically exempt code enforcement violations from new discovery rules and provide funding and financial assistance to institute these new mandates.

Resolution No. 6

Share Potential Cannabis Revenue and Support Local Option

WHEREAS, New York State has expressed interest in legalizing and regulating recreational, adult-use cannabis; and

WHEREAS, towns, as the government closest to the people, are in the best position to determine what is in the best interest of the health, safety, and welfare of their residents and execute the wants of the community; and

WHEREAS, should New York legalize recreational, adult-use cannabis, towns will incur expenses in the form of,

2020 Proposed Legislative Program

but not limited to, increased police enforcement, code enforcement and fire protection; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls on the Governor and the Legislature to ensure that any legislation legalizing recreational adult-use cannabis provides towns with the choice of whether to allow cultivators, processors, distributors, dispensaries and any other cannabis-associated facilities to operate within their jurisdiction; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor and the Legislature to share any revenue derived from legalizing cannabis operations to help fund town programs and functions impacted by such legalization.

Background

This is a new resolution drafted from one submitted by the Town of Claredon.

In 2019, there were proposals to legalize recreational adult-use cannabis in New York as part of the state budget. While the proposals authorized counties and cities with populations of more than 100,000 to opt out of allowing cannabis facilities within their boundaries, it provided no such option for towns. Furthermore, while the proposals allowed the state to impose various taxes and fees and counties to impose sales tax, there was nothing requiring that this new revenue be shared with towns, despite the fact that towns will be on the frontline of providing services related to adult use cannabis operations. Therefore, this resolution asks that towns have the ability to opt in or opt out of allowing cannabis operations in their jurisdictions. This is comparable to how alcohol and games of chance are treated under the law, where there is the ability to opt in through permissive referendum (see Alcohol and Beverage Law § 141) or mandatory referendum (see General Municipal Law § 188)). The resolution also requests that revenue be shared with towns to offset any increased costs incurred by towns as a result of legalized cannabis use.

Resolution No. 7

Comprehensive Real Property Tax Reform

WHEREAS, local governments currently serve in an economic climate that presents a multitude of financial pressures via constitutional and state taxing constraints, coupled with either stagnant or altogether eliminated federal and state aid; and

WHEREAS, despite these constraints, towns strive to provide essential services to their residents, relying on real property taxes as the primary source of revenue to finance these endeavors; and

WHEREAS, in 2016, the value of real property tax exemptions outside of New York City totaled \$457 billion, or approximately one-third of the total property value in the state; and

WHEREAS, non-exempt property owners must cover the tax burden of all exempt properties, with this tax shift rendering New York State taxes among the highest in the country; and

2020 Proposed Legislative Program

WHEREAS, New York State has primarily provided real property tax relief through ad hoc property tax exemptions instead of comprehensive property tax reform, resulting in a tax shift that has increased rather than reduced taxes; and

WHEREAS, the real property tax cap formula contains inequities that penalize towns, and despite these inequities, was made permanent as part of the 2019-2020 Enacted State Budget; and

WHEREAS, there is a national trend to use the “dark store theory” when assessing big box real property parcels, the consequence of which shifts the real property tax burden to the remaining taxpayers within the jurisdiction, increasing their tax burden, **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls on New York State to put a stop to ad hoc exemptions that eviscerate the tax base and lead to the highest taxes in the country; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor and Legislature to adopt tax cap reforms, including removing barriers to shared services that would save taxpayer dollars, imposing a true 2 percent cap, removing infrastructure project costs from the calculation and allowing growth from PILOT and tax-exempt properties to be included in the tax cap calculation; and BE IT FURTHER

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

Background

This is a new resolution combining various tax-related resolutions included in AOT’s 2019 Legislative Program and a resolution submitted by the Supervisors Forum of Erie County.

Addressing Tax-Exempt Property: Stagnant aid causes local governments to rely more heavily on real property taxes to finance their services. However, municipalities can levy and collect real property taxes only on taxable property; the more tax-exempt property there is in a municipality, the higher the taxes will be on the non-exempt property owner. Despite statutory constraints, the state and courts continue to expand the number and type of properties eligible for tax exemptions, which consequentially, will reduce the tax base and force municipal officials to cut vital services. The state comptroller recently reported that in 2016, property tax exemptions totaled \$457 billion, or about 30 percent, of the \$1.5 trillion in total property value outside New York City. That is, non-exempt property owners have to cover \$457 billion in real property exemptions. The systemic erosion of the tax base through the granting of ad hoc exemptions has resulted in higher taxes as the burden is shifted to non-exempt owners, as well as a decrease in essential services as local governments struggle to do more with less.

Tax Cap Reform: The Association of Towns has identified simple adjustments that can be made to the tax cap formula that would remedy the inequities in the tax cap and allow towns and other local governments to implement the cap in a less deleterious manner. Specifically, 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. The governor has largely been a proponent of shared services, as demonstrated by several of his recent legislative initiatives, so to achieve economy and efficiency, this disincentive should be removed from the tax cap formula.

2020 Proposed Legislative Program

Additionally, 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 allow governments better long-range budgeting and planning. 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. A simple legislative fix would remedy this obvious contradiction.

A final consideration for the tax cap is to remove the costs associated with infrastructure projects from the tax cap calculation, as this serves as a disincentive to take on necessary projects, and additionally, at the town level, these projects are subject to voter approval.

Dark Store Assessments: Lastly, the Association of Towns supported a bill in the 2019 legislative session that addressed the "dark store theory" assessment issue that, if left unaddressed, could significantly increase taxes in New York. Specifically, A4752-B / S5674 prohibits the use of the dark store theory when making assessment calculations, as this theory ultimately unfairly reduces the assessment of "big box" retailers by assessing them similarly to vacant and abandoned properties; the reduced assessment results in lower taxes for the big box retailer while increasing the tax burden among the other properties in the jurisdiction. This legislation passed the Assembly in 2019 but stalled in the Senate. This is a simple legislative fix that will have a real impact on real property taxes in New York.

Resolution No. 8

Support Optional, Town-Initiated Justice Court Restructuring

WHEREAS, town justice courts provide essential functions in communities and make court services accessible and convenient; and

WHEREAS, the Uniform Justice Court Act and Town Law already offers different town- and resident-initiated options for consolidating justice courts and sharing town justices; and

WHEREAS, towns and their residents are in the best position to determine whether it is in the best interest of the community to consolidate justice courts; NOW THEREFORE BE IT

RESOLVED, that the Governor and Legislature keep justice court consolidation and restructuring at local option and a locally initiated process.

Background

This is a new resolution drafted by staff.

Periodically, there are calls to eliminate, reduce or consolidate local justice courts, and most recently in November 2019, the New York State Attorney General called for justice court reform and consolidation at

2020 Proposed Legislative Program

a legislative public hearing. However, these recommendations fail to acknowledge that the Uniform Justice Court Act and Town Law offer three different ways to restructure local courts, either by petition or town board initiative (see Uniform Justice Court Act §§ 106-a; 106-b; Town Law § 60-a). This resolution looks to preserve that authority rather than taking a top-down approach where justice court consolidation and restructuring is mandated by the state.

Resolution No. 9 Support Municipal Recycling Programs

WHEREAS, towns are required to have recycling programs; and

WHEREAS, towns also operate solid waste transfer stations and are therefore required to comply with numerous complicated state operating regulations, many of which pertain to recycled materials, and

WHEREAS, significant changes to the world's recycling market have adversely affected the ability of most municipalities to sell most processed recycled materials, thus increasing the costs of running municipal recycling programs; and

WHEREAS, some processed recycled materials still have value, which if removed from municipal recycling streams, could place municipal recycling programs in further financial stress; **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls for the Governor, the Legislature and interested state agencies to re-evaluate current laws, policies and administrative interpretations in order to relieve the growing costs of processing and disposing of recycling materials; and BE IT FURTHER

RESOLVED, that the Association of Towns calls for New York State either to relieve mandates relating to recycling or provide local governments with funding that offsets the current losses incurred by municipalities that properly dispose of recycling materials; and BE IT FURTHER

RESOLVED, that any recycling initiatives, such as the expansion of the Returnable Container Act, avoid further imperiling municipal recycling programs by removing valuable material from municipal recycling streams or otherwise increase costs for municipalities.

Background

This resolution is drafted from a resolution submitted by the Town of Claredon and a resolution in AOT's 2019 Legislative Program.

In 2018, China enacted the "National Sword Policy," significantly limiting the types of processed recycled material it would accept from the U.S., thereby eviscerating the foreign market. Because they are no longer able to sell processed recycled materials, material recycling facilities (MRFs) with municipal contracts have had to recoup those losses by charging up to four times more than in 2018 and municipal MRFs are no longer able to offset costs by selling processed recycled materials. The end result is that municipal recycling programs, which local governments are required to have under General Municipal Law § 120-aa, are significantly more expensive

2020 Proposed Legislative Program

to run now, and in some cases, it is actually cheaper to send materials to a landfill; however, local governments considering suspending their recycling programs need to work with the Department of Environmental Conservation before taking formal action or risk legal repercussions.

To address the recycling crisis, there are proposals to expand the Returnable Container Act (colloquially referred to as the Bottle Bill) to include more types of containers. However, many municipalities are still able to sell certain types of processed recycled materials, and therefore, expanding the Bottle Bill to remove profitable recyclable materials will further undermine town recycling programs. Other proposals have included requiring municipalities to purchase goods made from recycled materials through the competitive bidding process, which could increase project costs. Therefore, this resolution not only requests that New York review and amend the recycling mandate placed on municipalities, it also asks for funding for municipal recycling programs, and that any proposal to address the recycling crisis not place a further financial burden on towns.

Resolution No. 10

Support Ways to Reduce Municipal Health Benefit Costs

WHEREAS, providing health benefits helps towns attract and retain valuable municipal employees; and

WHEREAS, health insurance costs have increased exponentially, and on average, rise about 8 percent annually for local governments; and

WHEREAS, most towns have limited options outside of using private insurance companies and community rated plans to provide health benefits, thus making insurance provision more expensive; and

WHEREAS, most towns are prohibited from joining county self-insured health benefit plans, which would be considered a form of sharing services and may potentially offer cost savings; and

WHEREAS, there are a number of barriers to creating Insurance Law Article 47 municipal health cooperatives, such as the number of lives that initially need to be covered; and

WHEREAS, it is unclear whether municipalities can join established BOCES health cooperatives governed by Insurance Law Article 47; and

WHEREAS, Insurance Law Article 47 health consortia are a form of shared services and also may provide significant cost savings in obtaining health benefits; and

WHEREAS, New York State encourages municipalities to collaborate and share services to reduce real property taxes, **NOW THEREFORE BE IT**

RESOLVED, that the Association of Towns calls on the Governor, the Legislature and the Department of Financial Services to ease the requirements to create Insurance Law Article 47 health care cooperatives, by reducing, for example, the number of covered lives required to start a cooperative or allowing for more flexibility in meeting various formation requirements; and BE IT FURTHER

2020 Proposed Legislative Program

RESOLVED, that the Association of Towns calls on the Governor and the Legislature to amend the Education Law so that there is clear authority for towns to join BOCES health cooperatives governed by Insurance Law Article 47; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor and Legislature to allow municipalities to join county self-insured health benefit plans and pursue other options to help reduce municipal health benefit costs.

BACKGROUND

This is a new resolution drafted by staff.

The amount towns spent on health insurance for employees has increased by more than three times since the 1990s, and in 2018, towns in New York spent approximately \$630 million. This is due, in part, to the fact that most towns are considered small employers (i.e. less than 100 employees), and therefore, they must purchase health insurance on a community-rated basis. Larger employers (i.e. more than 100 employees) can purchase health insurance on an experience-rated basis, which is overwhelmingly recognized as more cost-effective.

By participating in an Insurance Law Article 47 health cooperative or a county self-insured plan, towns would be able to obtain an experience-rated plan and save money. Joining would also help county plans and health cooperatives because more participants help spread risk allocation. However, the law currently does not allow small employer towns to join county self-insured plans, and there are a number of hurdles to creating an Article 47 health cooperative, so many that just one has been created since the 1990s. Both of these issues were identified in a number of Countywide Shared Services Initiative plans. Therefore, this resolution requests statutory changes authorizing towns to join county self-insured health benefit plans and changes to the Article 47 creation process to make it easier for municipalities.

Additionally, there are 11 BOCES health consortia that currently operate and are governed by Article 47. Although Insurance Law and General Municipal Law Article 5G allow BOCES and municipalities to share services, it is unclear under Education Law whether BOCES has the authority to work with municipalities when it comes to health insurance. Therefore, this resolution also requests that an amendment be made to Education Law so that there is an opportunity for municipalities to join BOCES health cooperatives that have already been created.