



2021 Proposed Legislative Program

Submitted for consideration to the Association of Towns Resolutions Committee

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1. Preserve and Support Home Rule
2. Share Potential Cannabis Revenue and Support Local Option
3. Support the Expansion of Cellular and Broadband Service while Preserving Local Authority
4. Seek Town Input for Clean and Renewable Energy Decision Making and Initiatives
5. Provide Towns the Authority to Determine Town Real Property Tax Exemptions and PILOT Agreements for County IDA-Sponsored Projects
6. Support and Fund Local Roads, Bridges and Highway Operations
7. Provide Training and Funding for Police Reform Requirements
8. Support Funding for Town Justice Courts by Increasing Reimbursement Rates, Authorizing Surcharges and Addressing Unpaid Parking and Traffic Fines
9. Provide Towns with More Options to Address Revenue Shortfalls and Cover Operating Expenses
10. Support Funding for Towns during COVID-19
11. Collaborate With Towns on Responses to COVID-19 and Vaccine Distribution
12. Create a Statewide Committee to Evaluate the Impacts of Recent Criminal Justice Reforms
13. Amend the Utility Moratorium on Termination of Services to Ameliorate the Financial Burden on Local Governments
14. Proactively Eliminate the “Dark Store Theory” as a Valuation Method to Reduce Real Property Tax Assessments

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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 routinely included in AOT's Legislative Program.

This resolution seeks to preserve and strengthen home rule and afford town governments the authority and autonomy needed to make local decisions to 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

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,

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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 resolution was included in the 2020 Legislative Program.

In 2019 and 2020, 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. 3

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

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

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

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

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

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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

A version of this resolution was included in AOT's 2019 and 2020 Legislative Programs.

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).

Furthermore, the last several Executive Budgets have contained proposals to pre-empt local authority over small cell wireless facilities sited in municipal rights-of-way. In addition to violating home rule principals, the proposed pre-emption in no way guarantees that service would be extended to underserved areas.

Resolution No. 4

Seek Town Input for Clean and Renewable Energy Decision Making and Initiatives

WHEREAS, New York State adopted the Climate Leadership and Community Protection Act (CLCPA), which sets forth the state's goal of 70 percent renewable energy by 2030, while also cutting greenhouse gas emissions 85 percent by 2050; and

WHEREAS, the state created the Climate Action Council, which is responsible for developing recommendations to meet the CLCPA targets; and

WHEREAS, Advisory Panels were created to provide the Climate Action Council with recommendations on specific areas with one panel designated for land use and local government issues; and

WHEREAS, there are no town or other local government representatives on the Climate Action Council or the Land Use and Local Government Advisory Committee; and

WHEREAS, the state adopted new legislation on the siting of large-scale renewable energy facilities that limits local government involvement compared to the siting process that was previously used; and

WHEREAS, clean energy projects may have significant impacts in the communities where they are located, and as the form of government closest to the people, towns can offer a unique and helpful perspective; and

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WHEREAS, towns can work with the state and other stakeholders to ensure that the CLCPA goals are achieved in a comprehensive, thoughtful and lasting manner, NOW THEREFORE BE IT

RESOLVED, that the Association of Towns calls on the Governor, Legislature, relevant state agencies, and other stakeholders to involve town officials and their representatives in the implementation and advancement of CLCPA goals; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor, Legislature, relevant state agencies, and other stakeholders to meaningfully involve town officials and their representatives in the development and advancement of any clean energy project taking place within a town's geographical jurisdiction; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor, Legislature, relevant state agencies and other stakeholders to abide local laws in the development and implementation of CLCPA goals as they reflect the needs and wants of the community.

Background

This is a new resolution.

As the resolution states, in 2019, the state codified clean energy goals, and to help the state achieve these goals, it created the Climate Action Council. There are also Advisory Panels to the Climate Action Council that offer recommendations on their specific topic area, including one on land use and local government. There are no current town, city, village, or county officials on the CAC or on the land use and local government advisory panel. Also in furtherance of the CLCPA goals, a new large-scale renewable energy siting process was included in the 2020-2021 State Budget. Compared with Article X, the process under which current projects are sited, there is less local government involvement. For example, there is no automatic hearing on an application; local laws may be superseded if they are considered unduly burdensome; and there is only one round of money available to local governments as of right now to address concerns regarding the project. In light of this, this resolution asks for local government officials to be included in the conversation at the state level regarding clean energy projects and that local needs, wants, and concerns be given due consideration when developing clean energy projects.

Resolution No. 5

Provide Towns the Authority to Determine Town Real Property Tax Exemptions and PILOT Agreements for County IDA-Sponsored Projects

WHEREAS, General Municipal Law Article 18-A, the New York State Industrial Development Agency Act, was adopted in 1969 to facilitate economic development and improve the economic conditions in specific localities through the use of Industrial Development Agencies (IDAs); and

WHEREAS, each IDA has a sponsoring municipality, with more than half of all IDAs in New York State being sponsored by a county; and

WHEREAS, projects approved by the IDA typically transfer title to its property to the IDA itself, thus making it exempt from real property taxes; in turn, the IDA then leases the property back to the project operator and at the end of the lease, title vests back with the original owner ; and

WHEREAS, to offset lost tax revenue, IDAs may negotiate and enter into payment in lieu of taxes ("PILOT")

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agreements with the project operator; and

WHEREAS, despite the significant impact on the town tax base, when a project goes through a county IDA, towns have no real authority regarding tax exemptions contained in PILOT agreements for a project; NOW THEREFORE BE IT

RESOLVED, that the Association of Towns calls on the Governor and state Legislature to amend General Municipal Law Article 18-A and any other relevant statutes to give towns the authority to determine the level of any exemption for any IDA project as it relates to town real property taxes; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor and State Legislature to amend General Municipal Law Article 18-A and any other relevant statutes to give towns the authority to negotiate and enter PILOT agreements as they relate to town taxes on any IDA project.

Background

This resolution was submitted by the Town of East Greenbush.

Industrial Development Agencies (IDAs) are public benefit corporations established by special acts of the state Legislature to advance the job opportunities, economic welfare, health, and general prosperity of New Yorkers. Based on the Office of the State Comptroller's annual report on IDAs, there are 109 active IDAs in New York State, including 56 county IDAs, one IDA for all of New York City, and 52 IDAs based in other cities, towns or villages that overlap jurisdiction with their county IDAs. A business may apply to any IDA that has jurisdiction where the business operates or plans to operate. If the IDA approves the application, the property and improvements become an IDA project, and the business typically becomes the project operator. The project then becomes eligible for exemption from various taxes (including property, mortgage recording and sales taxes for some purchases). Typically, the project operator will transfer title to the project property to the IDA to receive real property exemptions. According to the State Comptroller's Office, in 2018, IDA-related real property tax exemptions amounted to \$1.3 billion.

Although projects are generally exempt from property taxes while under IDA ownership, project operators typically make payments in lieu of taxes (PILOTs) to the taxing jurisdictions (municipalities or school districts) in which the projects are located, thereby offsetting the loss of revenues from those exemptions, at least partially. The State Comptroller's 2020 IDA report indicates that IDAs paid \$669 million in PILOT payments, thus resulting in a net \$784 million property tax exemption. IDAs must establish a uniform tax exemption policy, with limited input from affected tax jurisdictions, to provide guidelines for claiming certain exemptions. However, towns have no say when it comes to negotiating PILOT agreements or when a project will receive a real property tax exemption for town taxes.

Resolution No. 6

Support and Fund Local Roads, Bridges and Highway Operations

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

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

WHEREAS, the federal *Fixing America's Surface Transportation (FAST)*, which provides essential federal funding

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support for state and local transportation projects, expires in 2021; 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 2021; 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, an enduring and reliable stream of revenue for our local road system is essential for towns and other local governments to be able to properly plan their highway and bridge programs; NOW THEREFORE BE IT

RESOLVED, that the Association of Towns calls on the Governor, the Legislature and the Department of Transportation to develop a new long-term NYSDOT capital plan that addresses and fully supports local transportation systems including local roads, bridges and culverts; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor and the Legislature to restore, maintain and support CHIPS, PAVE-NY, BridgeNY, Extreme Winter Recovery and other highway funding in the 2021-2022 State Budget and to provide stable and sustainable funding for local transportation infrastructure; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the New York Congressional Delegation to adopt a multiyear federal surface transportation bill that includes robust and dedicated funding for local roads, bridges and transportation projects.

Background

The Association of Towns annual legislative program always includes a call for highway funding.

New York receives funding from the federal Fixing America's Surface Transportation (FAST) Act, which was set to expire in 2020 until Congress approved a one-year extension. The FAST Act provides \$305 billion in transportation funding nationwide over a five-year period. Long-term funding and 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.

The most recent five-year NYSDOT Capital Program expired in 2020. The prior Five-year NYSDOT Capital Program included 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. Towns rely upon these critical funding programs along with the Extreme Winter Recovery funding to support their highway infrastructure. The Governor had proposed a two-year NYSDOT Capital plan to address the uncertainty in future federal funding. In light of the COVID-19 pandemic, the state adopted a one-year capital plan. A new five-year NYSDOT capital plan that supports town highway infrastructure is critical to long-term capital planning and sustainable highway management.

The 2020-2021 State Budget included \$100 million for the PAVE-NY program, \$100 million for the BridgeNY program; \$39.7 million for the Marchiselli Program, \$438.1 million for CHIPS and \$65 million for Extreme Winter Recovery funding. The 2020-2021 state budget also included a Balanced Budget Amendment to address revenue shortages generated from the COVID-19 economic crisis. Pursuant to the Balanced Budget Amendment, the state

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is currently withholding a percentage of approved local highway funding, which could become a permanent cut without federal funding. New York's highway infrastructure is aging and in need of maintenance and restoration. Prior to the pandemic, the New York State Association of Town Highway Superintendents estimated that local governments should be receiving an additional \$1.3 billion annually in state highway funding to address need and usage patterns. This need is growing and requires predictable state and federal highway funding to ensure the safety of the traveling public.

Resolution No. 7

Provide Training and Funding for Police Reform Requirements

WHEREAS, on June 12, 2020, Governor Cuomo issued Executive Order No. 203 aimed at promoting public safety, improving community engagement, and fostering trust between police agencies and communities of color; and

WHEREAS, in furtherance of its goal, EO 203 requires local governments with police agencies to review current policies, procedures and practices, hold meetings with various stakeholders, and collaboratively develop a plan to improve relationships between police and communities of color and eliminate any racial disparity in policing; and

WHEREAS, in order to avoid having their funding from the state withheld, local governments with police agencies must certify to the Division of Budget by April 1, 2021 that a plan has been adopted; and

WHEREAS, even with some guidance offered by the state, developing an evidence-based plan as required by EO 203 may necessitate hiring outside consultants, experts, and employing other resources; and

WHEREAS, implementing plans may require additional training for police and related agencies on different strategies to employ; and

WHEREAS, withholding state funding to local governments may hinder the ability to comply with EO 203 and implement new policies and practices; and

WHEREAS, providing training and funding would help local governments better achieve and execute the objectives of EO 203, NOW THEREFORE BE IT

RESOLVED, that the Association of Towns calls on the Governor, the Legislature, and relevant state departments and agencies to provide training on ways to address issues of racial inequity in policing so that local governments are best able to identify and end any practices that contribute to such inequities; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor and Legislature to provide funding to local governments with police agencies to assist in creating plans and implementing new policies and practices to end any racial bias and disparate treatment by local police.

Background

This is a new resolution.

In June 2020, there were nationwide protests prompted by the death of George Floyd, a black man, who was killed in police custody. In response to this event and other instances of police brutality against black men and women during interactions with law enforcement, Governor Cuomo issued Executive Order 203: New York State Police Reform and Reinvention Collaborative. The order requires local governments with police agencies to perform a comprehensive review of current policing practices, convene a meeting between the local police agency and community stakeholders to help create a plan driven by an evidence-based review of policing strategies, draft a

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plan open to public comment, and certify to the Division of Budget by April 1, 2021 that a plan was adopted. The purpose of the plan is to reduce racial disparity in policing, respond to the specific needs and dynamics of the community in a way that also fosters trust between minority communities and the police, and promote public safety. If a local government does not submit its certification by the deadline, the Division of Budget has the authority to withhold state funding until it receives the certification.

In August 2020, the state issued a guidance document that “includes critical questions, information, and resources to frame and guide each community’s dialogue” and “references ... to give participants access to a range of ideas and research on every topic to delve deeper into the issues” (New York State Police Reform and Reinvention Collaborative: Resources and Guide for Public Officials and Citizens, p. 4 August 2020 [available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Police_Reform_Workbook81720.pdf]).

While the guidance document offered some clarity, the resolution asks for the state to provide training programs on ways to eliminate or significantly reduce any racial bias in policing, particularly as the state guidance document references the potential need for additional training. The Municipal Police Training Council already developed model policy guidance, and it potentially could be a resource to carry out state-sponsored training. Finally, the resolution asks for funding to implement these programs rather than withhold state funding, which may impair a local government’s ability to achieve the goals of the Executive Order.

Resolution No. 8

Support Funding for Town Justice Courts by Increasing Reimbursement Rates, Authorizing Surcharges and Addressing Unpaid Parking and Traffic Fines

WHEREAS, COVID-19 has impacted justice court operations thereby resulting in the collection of fewer fines and fees; and

WHEREAS, under General Municipal Law §99-L, towns and villages are reimbursed when they perform justice court services on behalf of another government entity, such as prosecuting and plea bargaining traffic violations for the state or county; and

WHEREAS, the reimbursement rate under General Municipal Law § 99-L has not been favorably adjusted since 1997; and

WHEREAS, authorizing towns to impose a surcharge on certain traffic fines would help neutralize the added expense of funding town prosecutors; and

WHEREAS, many towns have a significant amount of unrealized revenue in the form of unpaid parking and vehicle and traffic violation tickets; and

WHEREAS, towns have limited cost-effective and efficient ways to collect unpaid parking and vehicle and traffic violation tickets; and

WHEREAS, increases in reimbursement rates, authorizing surcharges, and creating ways to recoup unpaid traffic and parking tickets will not impose a cost on the state and would help reduce real property taxes for residents;
NOW THEREFORE BE IT

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RESOLVED, that the Association of Towns calls on the Governor and state Legislature to increase GML §99-1 reimbursement fees to towns; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor and Legislature to establish a new surcharge to maintain the office of town prosecutor, thereby reducing the expense to town taxpayers; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor, state Legislature, and related state agencies to create ways for towns to collect revenue due from unpaid parking and traffic violation fines, such as a temporary program where individuals can pay a one-time reduced fee to discharge their debt or authorize a payment plan for unpaid fines.

Background

This is a new resolution that also combines some requests from previous AOT Legislative Programs.

When towns prosecute vehicle and traffic tickets or misdemeanors on behalf of another government entity, they receive a small portion of the fine – specifically \$15. This amount has not been increased since 1997 and thus has not kept up with the rate of inflation or the rising expenses associated with prosecuting tickets. As such, this resolution requests that these reimbursement rates be increased and asks for legislation giving towns the authority to impose a new surcharge on offenses adjudicated in the justice courts to fund the position of town prosecutor.

Collecting unpaid parking and vehicle and traffic violation fines represents is a practical solution that would produce much needed revenue for towns. To enforce parking ticket collections, towns may send collection letters, assess penalties, file judgments against violators and report delinquencies to the Department of Motor Vehicles, which can prevent a person from renewing their vehicle registration or suspend current vehicle registration, although legislation recently passed by the Senate and Assembly would suspend the DMV's authority to impose suspensions (see A7463B/S5348B). Regardless of repeated attempts to collect, a number of parking ticket fines remain uncollected. For example, a 2013 audit from the Office of the State Comptroller indicated that even though one town had an 85 percent collection rate on parking tickets, unpaid fines from the previous five years amounted to almost \$1 million in lost revenue.

In addition to parking tickets, there is a different category of uncollected fines stemming from traffic violations. If violation fines go unpaid, towns have the authority to issue a bench warrant; however, that may be neither cost efficient nor effective, and it may raise legal challenges. Towns can report unpaid tickets to the DMV, which has the authority to suspend a license, but a study on license suspensions indicate that 75 percent of people with suspended licenses continue to drive and approximately 50 percent of licenses remain suspended a year later (see <https://www.drivenbyjustice.org/>). Thus, even with suspended licenses, a significant number of fines remain unpaid. In addition, A7463B/S5348B would also prohibit suspending licenses due to unpaid traffic fines.

This resolution asks the state to look for new ways to recoup unpaid traffic and parking tickets. Currently, there is no authority for justice courts to offer installment payment plans or a reduced fine for those who are unable to pay. This may take the form of creating an amnesty program, wherein individuals have an opportunity to pay a reduced amount to discharge their debt, authorizing installment payment plans, something which is proposed in A7463B/S5348B, or any other program that would help towns capture this unrealized revenue.

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Resolution No. 9

Provide Towns with More Options to Address Revenue Shortfalls and Cover Operating Expenses

WHEREAS, the COVID-19 pandemic has and continues to have significant and detrimental impacts on municipal revenue sources such as, but not limited to, justice court fines, mortgage recording tax, permit fees, and sales tax; and

WHEREAS, the COVID-19 pandemic is ongoing and will continue to impact municipal budgets for the foreseeable future; and

WHEREAS, towns currently have no authority to borrow from their reserve funds to cover lost revenue; and

WHEREAS, Local Finance Law § 29.20 (b) is the only authority available to local governments to issue debt to cover lost revenue; and

WHEREAS, the deficiency notes authorized under Local Finance Law § 29.20 mature no later than the close of the succeeding fiscal year following its issuance, thus making two years the longest maturity period for a deficiency note; and

WHEREAS, all municipalities in New York State need additional financial tools and flexibility to address revenue shortfalls and fund operational expenses so that they can provide continue essential services; NOW THEREFORE BE IT

RESOLVED, that the Association of Towns calls on the Governor and the state Legislature to amend Local Finance Law and extend the maturity date of deficiency notes to five years after a note is issued; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor and the state Legislature to authorize local governments to borrow from their reserve funds to cover shortfalls in revenue; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor, state Legislature, and any relevant state department or agency to give all local governments the ability to cover operational expenses and address revenue losses through means such as but not limited to the ability to issue bonds.

Background

This resolution is derived from one submitted by the Association of Erie County Governments on deficiency notes.

Local Finance Law establishes the parameters for municipal debt, with deficiency notes being the only debt instrument available to address revenue shortfalls. Under Local Finance Law 29.20, a municipality has to start repaying a deficiency note at the close of the succeeding fiscal year following its issuance. For example, a town would start repaying a deficiency note issued in November 2020 at the close of December 2021. Due to COVID-19, there have been historic shortfalls in revenue from sales tax, justice court fines, mortgage recording tax and permit fees, among others, and the impacts will reverberate in the years to come. Giving local governments five years before they have to repay deficiency notes would provide another tool to address revenue shortfalls without the added stress of impending repayments at a time when municipal budgets will likely still be feeling the strain from COVID-19.

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Additionally, while legislation was adopted in 2020 allowing municipalities to borrow from their reserve funds to cover COVID-19 related expenses, no authority exists to borrow from reserve funds to cover revenue losses. Giving towns this option is another way to address budget issues due to lost revenue that would be of no cost to the state.

Finally, throughout 2020, there were conversations about giving New York City the authority to issue bonds to cover operational expenses. This resolution asks that any authority related to covering operational expenses or addressing revenue be given to all local governments and not just New York City.

Resolution No. 10

Support Funding for Towns during COVID-19

WHEREAS, towns provide essential services to the 9 million New York town residents, including, but not limited to, ambulance, police and fire protection services, building and code enforcement, and highway maintenance, and have continued to do so throughout the ongoing COVID-19 health crisis; and

WHEREAS, the Coronavirus pandemic has created significant financial stress for local governments in New York as sales tax revenue has been lost, as well as other sources of revenue, such as permit fees, justice court fines, and mortgage recording tax; and

WHEREAS, the depletion of different revenue sources for local governments, combined with lack of funding, will result in the forced reduction or delay of certain essential services or shifting the cost onto real property taxpayers, many of whom are experiencing their own financial stress; and

WHEREAS, the Coronavirus Aid, Relief, and Economic Security (CARES) Act adopted by the federal government in March 2020 provided direct funding only to local governments with a population in excess of 500,000 people, thus making 932 of 933 towns in New York ineligible for such funding; NOW THEREFORE BE IT

RESOLVED, that the Association of Towns calls on the New York Congressional Delegation to support direct federal funding to all local governments, regardless of population size, in any COVID-19 federal relief legislation.

Background

As stated in the resolution, the federal stimulus package related to COVID-19 adopted in March 2020 provides direct funding only to municipalities with a population of 500,000 or more. All but one town in New York State falls below this threshold, and as local governments are on the front lines of providing essential services, this resolution asks that any future stimulus package include direct funding for local governments regardless of population size. The same request has been made by NYCOM and NYSAC.

Resolution No. 11

Collaborate With Towns on Responses to COVID-19 and Vaccine Distribution

WHEREAS, towns are the local government closest to the people and therefore uniquely situated to disseminate information and resources quickly and efficiently; and

WHEREAS, towns are dedicated to upholding public health, safety, and welfare; and

WHEREAS, COVID-19 is an unprecedented public health crisis that requires a concerted response; and

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WHEREAS, towns have a history of working well with other forms of government on different initiatives; and
WHEREAS, Governor Cuomo has announced the state's dedication to ensuring that any approved vaccine is distributed equitably and made readily available; NOW THEREFORE BE IT

RESOLVED, that the Association of Towns calls on the Governor, relevant state agencies, counties, and local health departments to further collaborate with towns and involve them in the decision-making process regarding COVID-19 vaccine distribution to ensure it is done in an equitable and efficient manner and to provide direct funding or reimburse towns for any expenses incurred; and BE IT FURTHER

RESOLVED, that the Association of Towns calls on the Governor, Legislature, state agencies, and counties to further include towns in conversations and decision making on the ongoing response to the COVID-19 pandemic, particularly when local resources are involved.

Background

Several companies have made recent announcements that they are preparing to seek federal approval on COVID-19 vaccines. In response to these announcements, Governor Cuomo has announced his dedication to ensuring that the vaccine is distributed equitably. To facilitate this, towns may be used as a resource, for example, by converting town halls into vaccine clinics, and would like to be part of the conversation with the state, counties and local health departments to coordinate this effort and any other response to the COVID-19 pandemic that involve local resources.

Resolution No. 12

Create a Statewide Committee to Evaluate the Impacts of Recent Criminal Justice Reforms

WHEREAS, towns are committed to upholding the safety and welfare of their community and ensuring that people are treated in a fair and just manner; and

WHEREAS, towns play a direct role in the criminal justice system through town police departments and justice courts;

WHEREAS, in 2019 to address social justice concerns substantial criminal justice reforms were enacted that limited instances when bail can be used to secure appearances and imposed certain discovery requirements on prosecuting entities; and

WHEREAS, in response to various concerns raised by the public, parts of these reforms were amended in 2020 to include more qualifying offenses for which bail can be set, to address timeframes for discovery that were considered too onerous and impractical, and to better protect victims and witnesses; and

WHEREAS, even with the amendments, the reforms place a strain on town and other local government resources and may, in some instances, curtail the ability to adequately protect victims, potential witnesses, and the public; and

WHEREAS, evaluating the impact of criminal justice reforms by speaking with groups who have been impacted by them will help ensure that social justice goals are met, victim and witness safety is prioritized, public safety is maintained, and that all parties involved in administering and executing these reforms are able to reasonably do so; NOW THEREFORE BE IT

RESOLVED, that the Association of Towns calls on New York State to create a statewide committee consisting of

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representatives from various groups impacted by the 2019 and 2020 criminal justice reforms including, but not limited to, police, public defenders, district attorneys, local judges and justices, racial and social justice groups, human rights advocates low income and minority groups, towns, and other local governments to evaluate the impact of these reforms and make recommendations on what, if any, further amendments are needed to ensure the fair and reasonable treatment of all participating in the criminal justice system.

Background

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. After various public criticisms, amendments to the criminal justice reforms were included in the 2020-2021 state budget legislation. For example, more crimes were added to the list of qualifying offenses for which bail can be set and the time to comply with discovery demands was extended between five and twenty days depending on the circumstances. There are concerns that the amendments are insufficient in addressing certain issues such as maintaining the safety of victims and witnesses, providing prosecuting entities enough time to adequately prepare and respond to discovery demands, the strain placed on local government resources in complying with these reforms. In order to address these concerns while also upholding the social justice initiatives that were the impetus behind these reforms, this resolution asks the state to create a committee consisting of representatives from interested parties, including towns, local police, district attorneys, low income and minority groups, public defenders, local judges and justices, to evaluate the impact of criminal justice reforms and compile recommendations on what, if any, changes should be instituted.

Resolution No. 13

Amend the Utility Moratorium on Termination of Services to Ameliorate the Financial Burden on Local Governments

WHEREAS, S8113A was signed into law by Governor Cuomo on June 17, 2020 as Chapter 108 of the Laws of 2020; and

WHEREAS, the law provides that no local government shall terminate or discontinue residential service of utilities for nonpayment of bills, taxes or fees during the duration of the COVID-19 State of Emergency, and additionally prohibits service termination for 180 days after the COVID-19 State of Emergency expires; and

WHEREAS, the State of Emergency in New York has already been extended to December 3, 2020 and is expected to extend further, and as such, extending the service termination date beyond May 3, 2021; and

WHEREAS, the law mandates that municipalities must provide customers with the right to enter into or restructure a deferred payment agreement if customers self-certify a change in financial circumstances due to the COVID-19 State of Emergency; and

WHEREAS, the law requires municipalities to provide written mailed notice to ensure that residential customers are aware of the new law; and

WHEREAS, despite the mailed written notification requirements, many residents are not paying utility bills or requesting a deferred payment plan after self-certifying a change in financial circumstances due to the State of Emergency; and

WHEREAS, revenues have significantly decreased in municipal enterprise funds for public utilities such as water, sewer and electric, threatening the solvency of the funds; and

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WHEREAS, the total indebtedness of residential utility customers is increasing at an alarming rate, making recovery of fees and deferred payments improbable; and

WHEREAS, municipalities will be forced to borrow to make their utility enterprise funds solvent, thereby increasing the costs of utility services to residents; NOW THEREFORE BE IT

RESOLVED, that the federal and state government should provide direct financial assistance to municipal utility enterprise funds to prevent further interruptions in essential residential services.

Background

This is a new resolution based on one submitted by the Association of Erie County Governments.

In June 2020, Governor Cuomo signed legislation that placed a moratorium on utility termination of services during a pandemic or state of emergency. Specifically, local governments are prohibited from terminating or discontinuing residential utility services for any user due to the nonpayment of bills, taxes or fees during the duration of the COVID-19 State of Emergency and 180 days thereafter. Additionally, local governments are required to provide written notice to all residential customers setting forth that their utilities will not be terminated if they fail to pay, and additionally, those that demonstrate a change in financial circumstances are authorized to enter into a deferred payment agreement without penalties or fees.

Many residents have endured hardship as a result of the COVID-19 State of Emergency, whether financial or otherwise. During this difficult time, one should not have to shoulder the additional worry that their water service may be terminated because they cannot pay their bills. At the same time, local governments that operate water utilities are providing a tangible good – in the form of water – that costs money to both provide and administer. In normal times, this procedure works smoothly; during the COVID-19 State of Emergency, local government budgets are stretched to maximum capacity as they work to provide essential government services with decreased aid and revenue.

The utility termination moratorium has significantly decreased municipal revenues and increased municipal indebtedness, as local government utilities work to provide this essential service with less funding. To that end, the Association of Towns requests that the federal and state governments provide financial assistance to municipal enterprise funds in order to properly comply with this state mandate.

Resolution No. 14

Proactively Eliminate the “Dark Store Theory” As a Valuation Method to Reduce Real Property Tax Assessments

WHEREAS, New York State Real Property Tax Law Section 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 to assist in assessment is the sale of a similar use comparable property; and

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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 similar to lighted stores as touchstones; and

WHEREAS, the real property tax revenue that would have been generated from a “Dark Store” that was properly assessed 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 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 resolution was on the Association of Towns’ 2018, 2019 and 2020 Legislative Platforms and was requested to be included in the 2021 platform by the Town of Ulster.

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 prevented big box retailers from using this theory to their advantage by requiring assessors to value them using the cost method and precluding the use of dark store comparables. Similar legislation was introduced in Michigan in 2016. Texas has estimated that over the course of the next five years, the dark store theory methodology could cost \$2.6 billion annually in tax shifts.

Importantly, courts in New York have begun to adopt the dark store theory assessment methodology; specifically, Home Depot successfully reduced their assessment by millions of dollars – thereby shifting their lowered tax burden to the other taxpayers in the jurisdiction – utilizing the dark store theory method in the Town of Queensbury (see *Home Depot USA Inc v. Assessor of Town of Queensbury*, 129 AD3d 1427 [2015]). Using the dark store theory on big box property owners would result in a lower assessment for such property owners, which ultimately leads to lower taxes for the commercial big box property owners. The reduction in assessment would unfairly shift the property tax burden to all of the other taxpayers in the jurisdiction. Accordingly, it is necessary to evaluate the issue and ensure that the dark store theory method of assessment is not continued in New York.

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Issues Referred to Staff

These are issues evaluated by the Resolutions Committee and were referred to AOT staff to work on. They will appear in AOT's Legislative Program as issues we are concerned with, but they will not be considered a priority for the year.

Amend Prevailing Wage – Change the manner in which prevailing wage is calculated to more accurately reflect the prevailing wage within a particular community.

