



POLICY ISSUES FOR DISCUSSION 2018

Finance

1. Increase Unrestricted Aid

It should come as no surprise that a recent survey conducted by Cornell University identified stagnant State aid as one of the top contributors to local government fiscal stress in New York. Cities, villages and their taxpayers have suffered through nine years without an increase in AIM funding, the State's program of unrestricted aid to municipalities. Just as annual increases in school aid help school districts comply with the tax cap and maintain essential services, municipal governments need and deserve similar annual increases in State aid. The tax cap, which has been well-below 2% since its inception, only accentuates the need for further growth in unrestricted State aid. AIM funding should be increased for all local governments based on an equitable formula that applies uniformly to every city, village and town, taking into consideration the amount of tax-exempt property a municipality has within its boundaries. A strong and growing state-local fiscal partnership is essential to generating economic vitality in all regions of our State. Providing unrestricted aid to the local governments is a critical component of such a partnership.

2. Fix the Tax Cap

Local governments in New York State have been subject to a "2%" tax cap since 2012. However, beginning in July 2013, the inflation factor has been less than 2%, which means so has the "2%" tax cap. While the tax cap has added to the pre-existing desire of cities and villages to control the growth in property tax levies, municipal officials have identified significant unintended consequences that have developed during the local implementation of the cap. Local officials are using all available means of budget-balancing, including austerity spending, drawing down of fund balances, cuts in the size of the municipal workforce, maximization of restructured and shared services between local governments, and postponed investments in key public infrastructure. This local austerity combined with minimal mandate relief and lack of state aid has a high price. The quality-of-life in our communities is suffering and local infrastructure continues to fall into disrepair. NYCOM strongly believes that the tax cap should be amended in the following ways: (1) make the tax cap a true 2% cap (as is the case with the state's self-imposed 2% cap on spending), not one tied to inflation; (2) provide an exclusion from the cap for municipal expenditures on public infrastructure, just as schools and the state have from their respective caps; (3) exclude the self-imposed levies of Business Improvement Districts (BIDs) from the tax cap calculation, and (4) ensure that the adjustments made to a municipality's tax cap when a transfer a function occurs do not act as a deterrent to sharing services.

3. Increase State Funding for Local Highways

While local governments will clearly benefit from the PAVE NY and BRIDGE NY programs created two year ago, local infrastructure needs continue to far outpace the amount of resources currently available. The Consolidated Highway Improvement Program (CHIPS) assists local governments with the cost of construction, reconstruction and improvement of local highways, bridges and highway-railroad crossings. The funding is distributed based on local highway mileage and vehicle travel. The 2017-18 State Budget did include an additional \$65 million for the repair of local roads, but this funding is not added to the CHIPS base and is therefore not recurring. And while there have been sporadic increases in the CHIPS program over the past decade, locally-owned roads remain in need of substantial near-term improvements. Given the massive funding needs, local governments must receive more bonded or pay-as-you-go transportation funding than they do currently.

Additionally, in June 2013, the Federal Department of Transportation issued an update to its regulations regarding ADA requirements to provide curb ramps whenever streets, roads or highways are altered through resurfacing. Some form of this requirement has been in place since 1994 but it apparently has not been adhered to or enforced until recently. As a result, local governments will incur additional costs as a result of this requirement and the CHIPS formula should be amended to provide additional aid based on sidewalk miles in a municipality.

4. Increase Funding for Water and Sewer Infrastructure

Infrastructure is critical both to a community's economic growth and improved quality-of-life. While the primary role of a local government is to provide vital services to its residents, cities and villages must also maintain critical public infrastructure such as roads, bridges, and water and sewer systems.

The 2017-18 State Budget included \$2.5 billion for Clean Water Infrastructure to help cities, villages and other municipal governments address water emergencies, pay for infrastructure projects, facilitate source water protection, and investigate and mitigate water contamination. While this is a significant investment, it will be phased in over five years and is designed to support a variety of initiatives including things like animal feeding operations and green infrastructure.

NYCOM supports current legislative proposals that would establish an annual funding stream that could be used by all cities and villages to supplement their water infrastructure operation and maintenance costs.

- **Safe Water Infrastructure Action Program** – A program designed to assist cities and villages in addressing crumbling water, sewer, and storm water infrastructure analogous to the Consolidated Highway Improvement Program (CHIPS) would help municipalities manage emergency repairs and invest in water infrastructure replacement and rehabilitation. This program would make payments toward the replacement and rehabilitation of existing municipally-owned and funded drinking water, storm water, and sanitary sewer systems (A. 3907 – Steck / S. 3292 – Tedisco).

- **Emergency Water Infrastructure Repairs Fund** – Throughout New York State, much of the water infrastructure systems are over one hundred years old, and many municipalities have not been able to keep pace with the deterioration of the pipes. Furthermore, investing in infrastructure must be balanced against other spending priorities within municipal budgets that are already strained by declining tax bases and the State-imposed property tax cap. The emergency water infrastructure repairs fund would provide funding to municipalities for the emergency repair of any municipally-owned water or sewer system, which would help cities and villages respond to crises without detrimentally impacting their annual budgets (A. 1902 – Santabarbara).

5. Authorize Municipalities to Charge for Services Provided to Tax Exempt Properties

While the tax cap has clearly placed significant pressure on local property tax revenues, another major source of pressure is the increasing amount of tax-exempt property a municipality has within its boundaries. Last year, Gannett newspapers completed an eight-part series on tax exemptions in New York State that helped to portray the magnitude of the issue. According to their research, approximately \$866 billion in property is exempt from municipal and school taxes; the number of wholly tax-exempt parcels in New York grew from 179,420 in 1999 to 219,602 in 2016, a 22% increase; and the value of those properties more than doubled from \$276 billion to \$567 billion over the same time period. Since the remaining taxpayers are the ones most hurt by this proliferation of tax exemptions, NYCOM supports legislation that would permit municipalities, at local option, to impose charges on tax-exempt properties to defray a portion of the cost of services local governments provide, such as police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply. While municipalities currently have the ability to impose user fees to cover some of these expenses, they are prohibited from doing so for some of the most costly services, including police and fire protection. Local governments must be given the ability to recoup at least a portion of the expenses they incur servicing tax exempt properties, particularly since such properties often place the greatest strain on municipal services. Given the reluctance among the courts and the State Legislature to more clearly define what types of property qualify as tax exempt. NYCOM supports legislation that would authorize charges on those tax-exempts that have the greatest ability to pay, such as the medical and educational institutions and facilities.

6. Restructure and Reform the Gross Receipts Tax

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

- **Require Compliance with Gross Receipts Tax Laws**

In January 2009, NYCOM was involved with an issue concerning National Grid and the applicability of the GRT on energy transactions involving Energy Service Companies (ESCOs) – specifically the revenues associated with the sale of the commodity by ESCOs, as well as the revenue associated with the delivery to ESCO customers. At the time, National Grid believed that no portion of the transaction involving ESCO customers (neither the purchase of the commodity nor the delivery) was subject to the local GRT.

NYCOM requested and subsequently received an advisory opinion from the NYS Department of Taxation and Finance in July 2009 stating that ESCO transactions are, in fact, subject to the local gross receipts tax. Despite this opinion, many ESCOs still do not pay the tax to those cities and villages that impose it. In most cases, their rationale for no longer paying is similar to that of National Grid – because the transaction does not take place entirely within the municipal boundaries. While this clearly is not consistent with the Advisory Opinion we received from Taxation and Finance, the Opinion does not address the issue of where the transaction takes place. In addition, NYSE&G and RG&E have taken the position – unique among all other gas and electric utilities in New York State – that when a customer buys their gas and/or electric supply from an ESCO, these utility companies do not pay any GRT on the revenue they derive from the delivery of that commodity. NYCOM supports legislation that would clarify that ESCOs and any transactions involving ESCOs are subject to the GRT (A. 8295 - McDonald).

- **Expand the Scope to Include Cellular Services**

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

7. Reduce the Interest Rate on Judgments from 9% to a Market Rate

Various sections of New York State law govern the interest rate on judgments paid by both public and private entities. Pursuant to the Civil Practice Law and Rules § 5004, the interest rate on judgments is set at 9%. Pursuant to General Municipal Law § 3-a, the interest rate on judgements paid by a local government "shall not exceed 9%." Despite this language in General Municipal Law, more often than not, the 9% rate is applied.

This rate is applicable in three circumstances: (1) interest on a claim until a verdict or a court's decision, (2) interest on a verdict or court's decision until it is reduced to judgment, and (3) interest on the judgment until the judgment is paid. While the requirement to pay interest on judgments is fair and equitable, the current rate of 9% is much higher than the interest rate that a judgment creditor would earn by investing the money. New York's local governments are frequently the target of litigation. In an average year, New York's municipalities pay over \$1 billion in claims and judgments. This cost is borne by taxpayers through higher taxes, increased borrowing or reductions in municipal services.

This artificially high rate of interest on judgments also creates a barrier to appeal since defendants risk having to pay substantial interest costs if the appeal is unsuccessful. This deters municipal defendants from appealing a verdict, even if they believe they have a strong case. Finally, the current interest rate on judgments acts as an incentive for plaintiffs to unnecessarily delay proceedings. NYCOM supports legislation that would tie the interest rate on judgments and accrued claims to a market rate (the one-year United States Treasury bill rate).

8. Prohibit Unfunded State Mandates

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

9. Expand and Enhance Sales Tax Measures

Municipalities throughout New York are losing millions in sales tax revenue as a result of the increase in e-commerce. This trend has also put the bricks-and-mortar businesses at an unfair competitive disadvantage. To address this inequity, NYCOM supports requiring marketplace providers to collect sales and use tax on taxable sales of tangible personal property that they sell to New York residents on the Internet.

In addition, counties and cities are the only two classes of local government that can impose a local sales tax. In most cases, the amount of sales tax revenue (if any) that villages and towns receive is determined by the county via a sharing agreement. NYCOM supports providing a role for villages and towns in negotiating those sharing agreements.

10. Authorize Local Option Hotel Occupancy Tax

Cities and village in New York State have limited revenue options available to them outside the real property tax. One such option is the hotel occupancy tax. Currently, municipalities that wish to impose a hotel occupancy tax must get a bill passed by the State Legislature giving them specific authorization. NYCOM supports legislation that would provide blanket authority for any municipality to impose such a tax simply by adopting a local law.

Employee Relations and Public Safety

11. Oppose All Employee Leave Legislation That Does Not Include State Funding to Offset the Costs to Cities and Villages

Section 92 of the General Municipal Law grants municipalities the authority to establish policies related to vacation, sick leave and leaves of absences for municipal employees. The ability for a municipality to manage their workforce is extremely important. Nevertheless, it is becoming increasingly commonplace for the State Legislature to pass bills mandating certain types of leave policies. For example, currently awaiting delivery to the Governor is a bill that would grant up to four hours of paid leave annually for cancer screening. This leave would be in addition to any leave that is already granted by a municipality for sick leave purposes. The Legislature continually fails to recognize the costs associated with these types of leave policies. However, on September 11, 2017, Governor Cuomo signed into law a bill that grants sick leave for certain employees with a qualifying World Trade Center condition and also reimburses any municipality (outside of NYC) for the cost of any line of duty sick leave granted. NYCOM should oppose any employee leave legislation that would impose a cost on municipalities and fails to include funding by the State to offset such costs associated with the state-mandated leave policy.

12. Limit Payments Under General Municipal Law § 207-a and § 207-c

Sections 207-a and 207-c of the General Municipal Law should be amended to statutorily reinstate a permanent "heightened risk" standard for granting firefighter and police officer disability benefits. In addition, support an accelerated process for determining when an individual is eligible for disability retirement, since the current process has been criticized as taking much longer than necessary.

Paid firefighters and police officers are potentially eligible for generous municipal disability benefits if an injury or illness is incurred in the performance of duty under General Municipal Law § 207-a and § 207-c. In the event of an injury in the performance of duties, the individual is entitled to all necessary medical treatment and receipt of a municipal disability benefit equal to the full amount of regular salary or wages until retirement. Previously, public employers were permitted to utilize a "heightened risk" standard to determine whether claimants were entitled to benefits. Under this standard, an injury incurred while performing a work duty which did not involve a hazardous activity would not be eligible for the municipal disability benefit available under General Municipal Law § 207-a and § 207-c. A police officer or firefighter who might be injured while involved with a nonhazardous work duty would instead file a claim for workers' compensation benefits. These sections of the General Municipal Law should be amended to statutorily reinstate a permanent "heightened risk" standard for the granting of these benefits.

13. *Impose Sunshine Provisions on Binding Arbitration*

Under the Taylor Law, when an impasse is reached in negotiations with a police or firefighter union, the final step in the impasse resolution process is the use of compulsory arbitration. In 2013, the Legislature and Governor reformed the arbitration process by setting forth new parameters for arbitration awards. Specifically, for those municipalities deemed "fiscally eligible," the arbitration panel is compelled to "first and foremost" give 70% of its weight and consideration to the local government's "ability to pay." The panel must also "recognize and take into account" the constraints imposed by the 2% property tax cap.

The law also established a Financial Restructuring Board for Local Governments. This Board may serve as an alternative arbitration panel for binding arbitration. If a municipality is a Fiscally Eligible Municipality and eligible for binding arbitration with a municipal union (i.e., police, fire), the municipality, by resolution of its governing board, with the concurrence of its chief executive and the municipal union, may jointly agree to have the Financial Restructuring Board serve as its binding arbitration panel. To date, no municipality has taken advantage of this opportunity.

The "reforms" enacted in 2013 have done little to change or improve upon what is clearly a distorted playing field when it comes to negotiations between a municipality and its uniformed employees. Recognizing that repeal of the statute is highly unlikely, NYCOM supports adding an element of transparency to the arbitration process. This would be accomplished by making the arbitration proceedings subject to the Open Meetings Law by requiring the arbitration panel to deliberate in a public forum and to present its decision at a meeting of the employer's legislative body.

14. *Repeal Police Chief Mandate*

Pursuant to the provisions of Civil Service Law § 58 (1-c), a city or village with a police department serving a population of 150,000 or less and having more than four full-time officers must maintain the office of chief of police. In addition, the Attorney General's Office opined (2012 Op. Atty. Gen. (Inf.) No. 2012-8) that under Village Law Section 8-800 (1) a "village need not establish a police department but if it does, it **must** also establish the position of chief of police." (emphasis added) Therefore, according to the Attorney General's Office, if a village creates a new village police department, regardless of the number of full-time officers it employs, it must also create the position of chief of police. Both provisions of law serve to supersede the judgment of elected municipal officials as to how best structure a police department and deprives them of administrative flexibility in the organization of a police department, something that is available with all other municipal departments. Consequently, both provisions of law should be repealed.

15. *Reform the Civil Service Appointment Process*

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

16. Make the Decision to Transfer the Work of Unionized Employees a Non-mandatory Subject of Negotiation

Under the Taylor Law, a decision to transfer the work of employees represented by a union is generally a mandatory subject of negotiation if the work has exclusively been performed by the unionized workers. Given the emphasis the current Administration has placed on the sharing of services among local governments, the Taylor Law should be amended to provide that a decision to transfer the work of unionized employees shall be a non-mandatory subject of negotiation.

17. Authorize Municipal Share of Foreign Fire Insurance Distribution

Pursuant to § 9104 and § 9105 of the Insurance Law, numerous fire insurance companies not domiciled in New York pay to the NYS Department of Insurance a premium tax on fire insurance policies written in the state. Each year, the Department distributes the funds to fire departments for their exclusive use. In 2015, \$38.7 million was distributed to 1,979 entities statewide (outside of NYC). These laws should be amended to permit municipalities, who sponsor and fund these fire departments, to receive a portion of the monies to cover any ancillary expenses related to a fire department's operations, such as the recently enacted cancer presumption benefits law for volunteer firefighters. By amending the Insurance Law as recommended, municipalities will have a yearly revenue source to help in covering such expenses.

18. Authorize Fees for Volunteer Emergency Rescue and Ambulance Services

The municipal authorities having control over a volunteer fire department may establish an emergency rescue squad within the department and may further authorize such an emergency rescue squad to provide general ambulance services. However, the statute which authorizes such activities, General Municipal Law § 209-b, prohibits any fee or charges for rendering such services. Municipal emergency rescue and ambulance services provided under other sections of law are not subject to such a restriction. General Municipal Law § 209-b should be amended to permit a city council or village board to establish a schedule of fees for emergency medical and transport services rendered by members of a volunteer fire department.

19. Remove Barriers to Group Health Insurance

NYCOM supports amending state law to allow smaller municipalities to join multiple employer trusts that are experience-rated, thereby allowing them to share in the health insurance costs savings associated with these trusts. Currently, state law requires that the health insurance policies of municipalities with 100 or fewer employees must be community-rated. The current statute has been identified as a barrier to working collaboratively to reduce municipal health insurance costs. Approximately 75% of NYCOM members have fewer than 50 employees and approximately 85% have fewer than 100 employees.

Government Operations and Community Development

20. *Create and Enhance Tools to Address Distressed and Abandoned Properties*

Distressed and abandoned properties continue to be a challenge for local governments throughout New York. Local officials need a comprehensive and effective tool-kit to address this increasing problem and to successfully revitalize their downtowns. NYCOM supports the following legislative proposals:

- **Allow Municipalities to Take Title to Abandoned Commercial Property and Streamline the Notice Process for Abandoned Property Proceedings** – Currently, Real Property Actions and Proceedings Law Article 19-A provides a relatively quick and easy method for local governments to take title to residential property that is “abandoned” within their jurisdictions. However, Article 19-A does not apply to commercial property. This statute should be amended to allow municipalities to take title to all real property that is “abandoned” so that the properties’ negative effects on the surrounding community can be promptly and effectively addressed by the municipality. Moreover, the notice requirements for judicial proceedings should be amended to match the notice requirements for *in rem* tax foreclosure proceedings (A. 7355 – McDonald).
- **Allow Counties to Shorten the Redemption Period for *in rem* Tax Foreclosure Proceedings** – By default, the redemption period for *in rem* tax foreclosure proceedings is two years. Two years is too long a time for properties that are being neglected or that have been abandoned. Consequently, State law should be amended to allow counties to shorten the redemption period for abandoned properties to one year (A. 2490 – McDonald / S. 175 – Marchione).
- **Allow Municipalities to Pierce the Corporate Veil of Shell Corporations that Abandon Properties** – Many neglected and vacant properties are owned by corporations, limited liability companies, or limited liability partnership that abandon those properties when they become economically unviable. These corporations, LLCs, and LLPs, leave local governments (and local taxpayers) having to deal with the cost of abating nuisance conditions and demolishing unsafe buildings. State law should be amended to allow local governments to pierce the corporate veil of limited liability entities to hold their parent corporations and their individual owners responsible for nuisance abatement and demolition costs that exceed the property’s value (A. 6673 – McDonald).

- **Allow Local Governments to Force Mortgage Holders to Complete the Foreclosure Process or Release Their Mortgage Rights for Properties that Have Been Abandoned by the Owners** – Local governments are struggling to deal with properties that are delinquent on their mortgage payments, but for which the banks are delaying in completing the foreclosure process. Unfortunately, in many of these instances, the property owners are abandoning their properties, leaving no one to maintain the property. Because the banks are delaying in completing the foreclosure process, the properties remain in a legal limbo, inhibiting the ability of local officials to address the blighting influence of the property on adjacent properties and the surrounding community. Local governments should be allowed to initiate legal proceedings compelling banks to complete the foreclosure process or to relinquish their legal interests in properties that have been abandoned by the property owner.

21. Authorize Statewide Property Tax Exemptions to Facilitate Renovation and Redevelopment of Properties

In New York's older municipalities, many properties sit under-utilized or even vacant because the properties have structures that require substantial renovation or even demolition to make the property marketable. The cost to renovate these properties is often a substantial barrier to the property's redevelopment because the cost of redeveloping or renovating the property will exceed its resulting value. Consequently, the private sector will generally not finance the redevelopment of the property. This phenomenon, commonly known as a gap in financing, requires a method to close such gap and to remove that impediment to redevelopment. A new statewide property tax exemption should be created that allows local governments to grant real property tax exemptions to cover gaps in the cost of renovating or demolishing and rebuilding structures. The length of the exemption period should be flexible so that it is long enough to account for the gap in private sector financing, but not longer than is necessary to cover such gaps. In 2015, the City of Batavia was authorized to establish a form of such exemption (see Chapter 406 of the Laws of 2015).

In addition, RPTL § 485-n provides a relatively robust property tax exemption for residential-commercial real estate development. However, only local governments located in Livingston or Steuben Counties are currently authorized to use the 485-n exemption to spur redevelopment in their communities. RPTL § 485-n should be amended so that the exemption may be used by any municipality in New York (A. 5424 – DiPietro).

22. Strengthen Uniform Fire Prevention and Building Code Enforcement

Criminal enforcement of violations of New York's Uniform Fire Prevention and Building Code is governed by Executive Law § 382, which provides that code enforcement officials may order Uniform Code violations to be remedied and to issue appearance tickets for such violations. However, as a condition precedent to criminally prosecuting Uniform Code violations, the CEO must serve a notice to remedy the violation in a time period established by the Secretary of State. Ambiguous and vague provisions of Executive Law § 382 have led courts to conclude that criminal actions may not be commenced against a defendant until a notice of violation (NOV) has been issued, see *People v. Caravousanos*, 2 Misc.3d 138(A) (Sup. Ct. App. Term 2004).

Until recently, these decisions were unreported or were only lower trial court decisions, which had little to no impact on local governments' ability to enforce and administer the Uniform Code. On September 22, 2014, however, the Department's Appellate Term rendered a decision in *People v. Plateau Associates, LLC*, 2014 WL 4958175 (N.Y. App. Term. Sept. 22, 2014) which stated that because the Secretary of State has not promulgated times within which violations of the Uniform Code must be complied with, as required by Executive Law § 382, local governments may not criminally enforce Uniform Code violations. These court decisions significantly hamper local government officials' ability to enforce the Uniform Code and deter flagrant violations of regulations designed to protect the public's health, safety and welfare. In instances when a violation of the Uniform Code has led to a condition that poses an imminent threat to life and safety, the person or entity served with a notice of violation should be forced to comply with such order immediately.

In January 2015, the Department of State promulgated an emergency rule in an attempt to address the *People v. Plateau Associates* decision. Unfortunately, this rule fails to provide local governments with adequate tools to enforce the Uniform Code. Consequently, Executive Law § 382 should be amended to create a strict liability "violation" for Uniform Code infractions, thereby giving local officials the option of prosecuting defendants for a violation and not a crime. The law should also be amended to clarify that the issuance of a notice of violation is not a condition precedent to commencing a proceeding in criminal court to seek compliance with the Uniform Code (A. 3798 – Jaffee).

23. Authorize Administrative Adjudication of Local Code Violations

Utilizing the local criminal courts to prosecute code violations has proven both time-consuming and expensive. Certain cities are authorized to appoint hearing officers to adjudicate code and ordinance violations rather than going through the court system. Legislation should be enacted to allow all municipalities to appoint hearing officers to adjudicate code violations that will expedite resolving these cases, as well as reduce overburdened court dockets.

24. Amend the Village Dissolution Law

In 2009, the law governing the process for dissolving villages was significantly altered. The new law lowered the number of signatures needed to initiate dissolution proceedings. Moreover, the new process requires a study and plan on the dissolution to be performed *after* a vote on whether to dissolve is conducted. This minimal signature requirement and backwards procedure of developing a dissolution study and plan after voting to dissolve has resulted in a process that is confusing and uninformed. The law should be amended to require petitions initiating dissolution proceedings to contain signatures equal to at least 25% of the number of electors at the last general election of the local government entity or five thousand, whichever is less. In addition, the law should require that a dissolution study and plan be developed and approved by the village board prior to the dissolution vote.

25. Strengthen New York's Land Bank Program

One tool that is proving to be useful in dealing with New York's plethora of vacant and abandoned properties is the land bank, which has been due in large part to funding provided by the Office of the Attorney General from bank settlements. Unfortunately, these funds will not last forever. Consequently, a systemic funding source for land bank operations must be established. Communities with land banks should be authorized to increase the interest imposed on delinquent taxes and assessments by 0.1 percent per month, with those increased funds dedicated to land bank operations.

26. Require Local Government Notification of School Projects

Pursuant to New York State Law, educational institutions are substantially immune from local land use regulations. This system results in situations where schools undertake projects that do not fit in with the surrounding community, negatively impacting the neighborhoods in which they are located and straining local government infrastructure which cannot support the school's improvements. State law should be amended to require schools to provide advance written notice to their host local governments of projects that would otherwise require local government land use approval so that municipal officials may inform school officials of potential negative impacts such projects may have on the surrounding community.

27. Limit the Application and Cost of the Prevailing Wage Mandate

NYCOM supports the following legislative proposals that would make the prevailing wage mandate less onerous for local government entities:

- **Amend Application and Calculation of Prevailing Wage** – New York State law requires municipalities that are parties to public works contracts to pay laborers, workmen or mechanics “the prevailing rate of wages.” The dollar threshold that determines when prevailing wages must be paid was enacted in 1971 and has not changed. However, since that time, consumer prices have quadrupled. A first and relatively easy step to reforming this mandate would be to amend the statute to exempt building service contracts of less than \$50,000 from prevailing wage laws. The current statute exempts only those building service contracts that are below \$1,500. Similarly, the statute governing prevailing wage as it relates to public works contracts – which currently contains no threshold – should be amended to exempt public works contracts of less than \$75,000 from prevailing wage obligations.

Additionally, the method currently used for calculating the “prevailing rate of wages” for public works projects results in local governments having to pay highly inflated wages. The method currently used by the State to calculate “prevailing wages” for public works projects should be changed to use the State's Unemployment Insurance Prevailing Wage tables to determine regional prevailing wage rates for projects. The Unemployment Insurance Prevailing Wage tables are updated annually based on the semi-annual Occupational Employment Statistics survey of employers and reflects local economies' actual prevailing wages.

- **Oppose All Expansion of Prevailing Wage** – All public works projects, irrespective of capital costs, are subject to prevailing wage requirements in New York State. The Department of Labor determines the local prevailing wage by examining union contracts that cover at least 30% of workers in a designated trade and locality. However, the trades' combined hourly wages and fringe benefits exceed market compensation rates and can add 13-25% to public works project costs depending on the region, resulting in billions of excess costs added to publicly funded construction projects throughout the State. Expanding prevailing wage mandates to other publicly funded projects, such as affordable housing, which is estimated to raise project costs by 25%, must be stopped.

28. Authorize Design-Build for Local Governments

The design-build model is a project delivery system used as an alternative to the traditional design-bid-build model. Under the traditional approach, design and construction are split -- separate entities, separate contracts, separate work. The design-build system is an integrated approach that provides the municipality with design and construction services under one contract. By relying on a single point of responsibility, the design-build model minimizes risks for the project owner, reduces the delivery schedule by consolidating the design phase and construction phase with a single source of contact, and cuts costs by streamlining the construction process. The most recognizable and extolled examples of design-build – the Tappan Zee and Kosciuszko Bridges – credit design-build with keeping the Kosciuszko Bridge project on time and on budget and reducing the Tappan Zee Bridge's construction costs by 30% and the project's completion time by 14%. While several state agencies are currently authorized to use and benefit from design-build, no authority exists for municipalities to use this model.

29. Reform the Scaffold Law

Enacted in 1885, the Scaffold Law holds contractors, employers and property owners absolutely liable for gravity-related injuries, even if the worker was grossly negligent. Municipalities are large property owners, and as such, are faced with widespread liability for accidents that occur on worksites beyond their supervision. Studies have shown that general liability insurance premiums have skyrocketed due to increased litigation resulting from the Scaffold Law. In fact, in New York – the only state with this law on the books – insurance premiums are 300% to 1200% higher than any other state in the country. As a result, municipalities involved in construction projects are faced with significantly higher construction costs.

In light of the damaging effect of the Scaffold Law on local governments and their taxpayers, NYCOM supports legislation that would establish a comparative negligence standard for personal injury, property damage or wrongful death actions arising under the Scaffold Law when the employee has committed a criminal act, used drugs or alcohol, failed to use safety devices, or failed to comply with employer instructions or safe work practices when a cause of action accrued (A. 2148 – Morelle / S. 2795 – Gallivan). This legislation would create a more equitable standard, holding employees who directly contribute to their injury liable for their apportionment of fault.

30. Preserve Municipal Authority to Regulate Rights-of-Way

The next generation of wireless internet service will require far more networks and small antenna systems than was previously required and the siting for each of these nodes will require coordination and participation by local governments. Wireless providers are proposing to fill service gaps by increasing their use of the municipal right-of-way (ROW) by demanding access to utility poles within the ROW. Preserving local control of the ROW is essential to ensure wireless technology is safely installed and positioned in accordance with the community's aesthetic concerns.

- **Oppose Uniform Regulation of Wireless Facilities** – The distribution of state-of-the-art broadband wireless technology will have tremendous benefits for businesses, while at the same time improving general quality-of-life. But local government officials and the communities they represent have valid concerns about the safety of the structures upon which this equipment is placed and about the aesthetic impacts wireless equipment has on a community. NYCOM opposes any legislation (e.g., A. 7489 – Woerner / S. 2042 – Little) that would handcuff the ability of local officials to address any negative impacts from technology that have yet to be developed and deployed, or provides for default approval of wireless installations, usurping any local government authority to address aesthetic concerns to nearby residents, businesses, and property owners.
- **Ensure Taxability of Cellular and Broadband Infrastructure** – State and federal law permits municipalities to receive fair and reasonable compensation from telecommunication providers' use of the ROW. However, recent cases have limited the ability of cities and villages to fully receive this compensation. By amending the definition of real property to include telecommunications equipment, cities and villages would be authorized to receive a reasonable return on the use of the municipal ROW (S. 239 – Golden).
- **Eliminate Double Utility Poles** – Utility companies have been replacing aging utility poles to better withstand inclement weather. Unfortunately, it is a common practice for utility companies to remove some but not all of the poles being replaced, leaving the remainder of the pole hanging and to be removed by the other utility companies whose wires and cables are still attached. State law should be amended to require utility companies to remove the entire pole when undertaking a replacement.

31. Strengthen Efforts to Combat Human Trafficking

November 2017 marks the centennial of women's suffrage in New York, yet so many women and girls in this State are disenfranchised and commoditized by the commercial sex industry. Neither New York's robust legal framework to combat sex trafficking, nor the collective understanding that trafficked persons are victims forced into the sex trade, has diminished the viability of the commercial sex industry. But by developing a coordinated response to human trafficking, local governments may help stymie the commercial sex and labor industries and serve as an integral component to effectively abolishing modern-day slavery.

- **Establish Human Trafficking Awareness and Training Initiatives** – Despite having the most progressive and comprehensive legal framework to combat sex trafficking in the country, New York ranks among the top four states with the worst human trafficking problem in the nation, and nearly all communities throughout New York State are impacted by human trafficking. In 2016, legislation was enacted (A. 8650-B – Paulin / S. 6835-B – Lanza), requiring every general hospital, public health center, diagnostic center, treatment center or outpatient department to provide identification, assessment, and appropriate treatment or referral of persons suspected as human trafficking victims and to provide notification to social services when such suspected person is under the age of 18. Training the employees of hotels and other lodging establishments to recognize human trafficking victims and requiring such locations to post the national human trafficking hotline telephone number will also serve to identify victims and connect them with necessary services (A. 6834 – Paulin) / S. 5955 – Hamilton).
- **Require Competitive Bidding Contracts Contain Statement on Human Trafficking** – Human trafficking is the largest manifestation of slavery today and involves the exploitation and commoditization of both sexual and physical servitude through force, fraud, and coercion. As a result, many goods and services sold internationally have implications of human trafficking at some point during the chain of commerce. By requiring that all competitive bidding contracts include a statement attesting to the best knowledge of the bidder that the goods, work, or services to be supplied or performed did not result from human trafficking, political subdivisions in New York State will help combat human trafficking (A. 6380-C – Titone / S. 5486-B –Alcantara).

32. Encourage Voter Participation in New York State

To facilitate civic engagement and simplify the voting process in New York State, NYCOM supports the following proposals:

- **Absentee Voting** – Early voting has the potential to improve voter enfranchisement and promote civic engagement. However, in achieving this laudable objective, New York State must balance the interests of voters with an efficient voting system. In-person early voting fails to take into consideration the practical and fiscal impacts such voting will have on villages conducting their own elections. Alternative systems that expand absentee voting, however, may serve to increase voter participation, minimize confusion at poll sites, and ensure effective and well-organized village elections.
- **Same-Day Voter Registration** – Same-day voter registration allows qualified voters to register to vote and cast their ballots on the same day. Like early voting, same-day registration promotes voter enfranchisement and civic engagement by increasing voter turnout and minimizing artificial boundaries to voting, like the failure to re-register after moving. States that have adopted same-day registration report minimal costs and confusion associated with the program's implementation, and no increased incidence of voter fraud. However, robust state-wide registration systems are critical to implementing same-day registration. Furthermore, villages conducting their own elections must have State and county support in adopting this program. But through cooperation and coordination, New York State may increase empowerment and satisfaction for all voters by enacting same-day voter registration.

33. Expand and Clarify Local Procurement Procedures

Competitive bidding and public contracting is often complicated by a lack of clarity in the procurement statutes. NYCOM supports legislation that clarifies and streamlines the procurement procedures established by the General Municipal Law, while also helping municipalities control the expenses associated with public contracting.

- **Expand Piggybacking to Service Contracts** – In 2012, a new subdivision 16 was added to General Municipal Law § 103 to authorize political subdivisions to purchase apparatus, materials, equipment, and supplies, and to contract for services related to the installation, maintenance, or repair of such items, through the use of any contract let by a political subdivision of the United States, provided that the contract was let in accordance with the competitive bidding requirements of New York State, and that the original contract was made available for use by other governmental entities. Known as cooperative purchasing or piggybacking, this procedure increases efficiency and reduces costs by enabling cities and villages to purchase goods and related services off of other government agencies' contracts without having to submit to the full competitive bidding process. Since its enactment, piggybacking has resulted in demonstrable savings to cities and villages in both time and expense. Expanding the piggybacking authorization to all service contracts will further increase local government effectiveness by easing the burdens of competitive bidding and minimizing expenses (A. 1388 – Jenne / S. 2948 – Little).
- **Clarify Procurement Procedures when Obtaining Professional Services** – When the competitive bidding statutes do not apply to municipal procurements, cities and villages must adhere to their own procurement policies to contract for goods and services, including goods or services that are exempt from competitive bidding, like professional services. Generally, procuring professional services involves a request for proposals (RFP) process through which cities and villages analyze the proposals through a scoring system. However, such evaluations can be costly and time consuming and do not necessarily produce results that are in the best interest of the municipality. Legislation that clarifies the process of retaining professional services is necessary to control expenses under the RFP process, and to ensure cities and villages are obtaining these services in accordance with their own procurement policies and in the best interests of their communities.

Environment and Energy

34. Increase Brownfield Opportunity Area Grant Program Funds

The Brownfield Opportunity Area (BOA) Program provides financial assistance to communities, up to 90% of the total eligible project costs to revitalize neighborhoods impacted by brownfields. Brownfields are properties that remain undeveloped or dormant as a result of actual or perceived contamination. These properties have a dire economic and environmental impact on localities. Funding from the BOA Program allows localities to convert brownfields into productive use, creating businesses and jobs, and providing a source of revenue to local economies. Legislation (A. 3505 – Brindisi / S. 1874 – Avella) seeking to streamline the BOA program by re-directing funding to the post-designation phase and eliminating the pre-nomination process passed the Senate in 2015, 2016 and 2017, but saw little movement in the Assembly. The BOA Program should be given stable, consistent funding, so that local governments can access these funds and address the myriad of problems associated with brownfields.

35. Establish a Permanent Funding Stream for the Environmental Restoration Program

As part of the Clean Water/Clean Air Bond Act of 1996, a \$200 million Environmental Restoration Program (ERP) was created to assist local governments by reimbursing up to 90% of on-site costs and 100% of off-site costs for remediation of properties contaminated by petroleum or other hazardous substances. While this program was an effective tool in assisting municipalities with contaminated property, requests for funding have exceeded the \$180 million currently authorized. While the 2017-2018 State Budget provided funding for Clean Water Infrastructure to help cities, villages and other municipal corporations address water emergencies, pay for infrastructure projects, facilitate source water protection, and investigate and mitigate water contamination, the available resources do not meet the demand in necessary funding for this program. This important initiative should be given a permanent and full funding stream not conditioned on a memorandum of understanding.

36. Provide Funding for Water Contamination Testing

The mounting water contamination crises in recent years have called into question the belief of many New York residents that access to safe, clean drinking water is a foregone conclusion. In 2016, the Village of Hoosick Falls discovered perfluorooctanoic acid (PFOA), the chemical found in nonstick pan coating, had poisoned its wells and caused the increased incidence of cancer in that community. Responding to this and many other water contamination crises, the Governor signed legislation (A. 10740 – Lupardo / S. 8158 – O'Mara) in 2016 requiring school districts to conduct periodic tap testing of schools' potable water systems in an effort to monitor and remediate lead contaminated water systems. This new law authorizes the State Education Department to provide additional building aid to school districts for the purpose of testing the water and installing the required filtration and remedial systems when contamination is discovered. However, the aid is limited to the installation of remedial systems reviewed or approved by a water quality profession and costs incurred prior to July 1, 2019 for lead contamination discovered during the program's base year. Additionally, the aid does not necessarily cover the entire cost of testing and remediation, but is subject to the building aid ratio set forth in the Education Law.

It is anticipated that similar water testing requirements may be placed upon local governments during the upcoming legislative session. If so, such a mandate must be predicated on State funding made available to cover the entire cost of both the testing and installation of required remedial systems. While increased attention on water contamination issues and the requirement that water systems be systematically evaluated is paramount given the tremendous impact water contamination has on public health and the regularity with which these instances are arising, municipalities cannot be expected to absorb the costs of water systems testing and remediation.

37. Promote Sustainability and Alternative Energy Resources

While fostering the transition from older energy sources to clean energy systems is a laudable goal in the worldwide effort to increase sustainability and reduce pollution, actualizing the Clean Energy Standard and New York State's other renewable energy goals will depend on the continued coordination and cooperation of energy companies and local governments. Efforts to promote alternative energy systems that integrate smart city initiatives should be supported. However, such initiatives must be balanced against already stretched municipal budgets. Therefore, NYCOM supports legislation and initiatives that promote the use of alternative energy systems and make utilizing such resources easier in cities and villages, but property tax incentives cannot be forced on municipalities without the ability for local governments to opt-in.

38. Support the Expansion of Broadband Statewide

Everything is becoming dependent on internet connectivity. Job applications, banking, scholarships, educational opportunities, and telehealth services, all rely on robust and consistent internet access. However, many communities throughout New York State do not have meaningful access to high-speed internet, which dramatically disadvantages residents and thwarts the economic development in these localities. Legislation requiring the Public Service Commission to determine the status of broadband and fiber optic services in the State and to provide for the construction and installation of these services where broadband and fiber optic services are deemed absent, insufficient, or inadequate, will help reverse the negative impacts poor internet access has on underserved communities (A. 7530 – Ryan / S. 6114 – Gallivan).