



**Association of Towns
of the State of New York**

Public Hearing
on
Real Property Taxation
before the

The State Division of the Budget

Thursday
December 13, 2007
1:00 a.m.

Comments Submitted
By

Empire State Plaza
Meeting Room One

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Preliminary Statement

The Association of Towns was formed in 1933 to help towns obtain greater economy and efficiency. We currently represent 907 of the 932 towns in New York State. The Association serves town governments by providing training programs, research and information services, technical assistance, legal services, insurance programs and a variety of training tools and publications for town officials, including assistance with developing and implementing shared service agreements.

Towns should not be undervalued as service providers for New Yorkers. According to the latest Federal Census, about 8.7 million people live in towns. That is roughly 46% of the State's population. Although towns rely heavily on property taxes (roughly 50% of our revenue) to fund local services we are only responsible for a small portion of the real property tax dollar paid (Based on 2004 Comptroller's data excluding NYC: Towns 11.52% [town, highway and special districts]; Counties 17.83%; Cities [excluding NYC] 3.84%; Villages 3.84%; Fire Districts 1.92% and School Districts 61.06%).

Towns, like other levels of government have a keen interest in keeping services affordable and lowering real property taxes. The State needs to do three things to lower real property taxes and keep services affordable: (1) restore revenue sharing and infrastructure aid; (2) fully fund mandates and (3) reform the real property tax system.

I. Restore Revenue Sharing and Infrastructure Aid

Revenue Sharing

Revenue Sharing is a Property Tax Relief Program

The importance of general purpose revenue sharing cannot be overstated. Revenue Sharing Aid was conceived as a state program of real property tax relief.

Restore Cuts to 1988 Levels

Between 1988 and 1992 the Revenue Sharing program was reduced by over 50%, falling from \$1.023 billion to \$489 million. Due to this abandonment of Revenue Sharing, local governments have lost more than \$4.2 billion in aid over the past two decades. Revenue Sharing once represented a significant subsidy to towns (5.62% of total revenue in 1986); by 2005 it had fallen to insignificance at 0.70% of total revenue. Towns have had to replace that lost aid with property tax increases and service reductions. These aid reductions are also at the root of structural budget problems facing many municipalities today. The first step in redesigning Revenue Sharing is to restore all local governments to their 1988 aid levels.

Unrestricted Aid

Revenue Sharing Aid has always been, and must remain, unrestricted assistance. We believe that as a strong home rule state that the government closest to the people is in the best position to determine specific local priorities and needs.

Funding Stability

More than anything, our local governments need a steady stream of non-property tax revenue upon which they can rely. Instead of mirroring the annual change in state tax revenues, as Section 54 of the State Finance Law has required, Revenue Sharing appropriations have taken inordinately large hits in the state's bad fiscal times, and not benefited during the state's years of healthy fiscal

conditions. The bottom line is that the state has failed to make local property taxpayers a high priority. The new Revenue Sharing program must provide for reasonable growth within the context of the state's overall fiscal environment.

Formula Fairness

Once Revenue Sharing is restored to 1988 levels, additional funds should be distributed to all general purpose local governments based upon factors sensitive to both fiscal need and operational efficiencies at the local level. Governments that provide the same types and levels of essential services should be treated equally.

A recent State Comptroller's Report noted, "New York State must ensure that the revenue sharing program receives a higher priority in State budget negotiations than it has received over the last several decades." We agree with this view and look forward to working with State lawmakers to improve revenue sharing for all New Yorkers.

Infrastructure Aid

(CHIPS, Multimodal, Water, Wastewater, Stormwater)

The Consolidated Local Street and Highway Improvement Program (CHIPS)

Safe and reliable infrastructure is important to our quality of life and economic vitality. CHIPS funding is subject to legislative discretion – one way to lower real property taxes would be to provide a continuing and predictable stream of revenue for our local transportation system in order for local governments to be able to properly plan their highway and bridge programs. In addition, operation and maintenance funding should be allocated in the State's General Fund.

Local Governments are responsible for 85% of New York's Roads and Bridges

CHIPS funding only covers 25% of the cost of local roads and bridges – leaving 75% to be funded by the real property tax base. Towns spend twice as much as cities on transportation costs with highway related costs eating up the lion's share of the average town's budget.

We identified \$2 billion gap in funding to support town roads in 1999. That amount has increased substantially with the skyrocketing cost of materials.

You have already heard testimony from DOT Commissioner Glynn on the state of our roads and infrastructure and the rising cost of materials. The minimum amount the Department will need for local highway programs over the next 20 years is \$8.6 billion (roads) and \$13.2 billion (bridges) will be required to address repair of local bridges.

We also commend to your attention proposals such as the BRIDGE Reform Act introduced by Senator Libous that will phase out non-capital expenditures from the Dedicated Highway and Bridge Trust Fund (DHBTF) over a 5-year period.

While the funding needs seem staggering, investment in our infrastructure is an investment in the lives and economic vitality of our state. There is strong possibility that this investment could pay for itself -- according to the Federal Highway Administration every \$1.00 spent on street and highway improvements results in \$5.40 in economic benefits. Moreover we are already paying for our failing infrastructure in a hidden tax. In 2005, the American Society of Civil Engineers

reported that driving on roads in need of repair costs New York motorists \$3.2 billion a year in extra vehicle repairs and operating costs (\$285 per motorist) which is essentially another tax on New Yorkers

Water, Wastewater, Stormwater

Water and Wastewater

We would like to see a dedicated line item in the budget for water and sewer infrastructure projects. Many New Yorkers rely upon municipal water and sewer services to provide clean drinking water and affordable wastewater disposal. The American Society of Civil Engineer's 2005 Infrastructure Report Card found that New York's drinking water infrastructure needs \$13.15 billion (water) over the next 20 years and \$20.42 billion (sewer) to fund New York's wastewater infrastructure needs. We would also like to see water and wastewater programs fully funded.

Municipal Separate Storm Sewer Systems (MS4) program

In addition to funding for water and wastewater, funding is needed for stormwater management compliance. The U.S. EPA has estimated that MS4s will spend \$3.00 - \$60.00 per capita to comply with these stormwater regulations. Last year the New York State only provided \$16 million in a competitive grant program which was designed to serve stormwater as well as other environmental needs. \$16 million would not provide enough funding to adequately cover compliance costs for one MS4 municipality let alone the hundreds covered by the program. More funding and technical assistance is needed to keep this program affordable for the real property taxpayers.

II. Fully Fund Mandates

Mandate relief is the battle cry of local government leaders. In 2003 one local government official started a public campaign entitled "Dump Unfunded Mandates." An unfunded mandate is a statute or regulation that requires local government to perform certain actions, yet provides no money for fulfilling the requirements. There are hundred in New York State but given the limited time I will highlight just a few.

Public Works

Prevailing Wage

Labor Law, §220 requires laborers to be paid prevailing wages on all public works contracts. The term "prevailing wage rate" however is a misnomer. It connotes the "average wage rate," which sounds reasonable. However, in fact, prevailing wage rates are markedly higher than average wages. In large part, these costs are compounded by how the term "prevailing wage" is defined in New York law. Labor Law §220 (5)(a) defines prevailing wage as the rate of wage paid by the locality by virtue of collective bargaining agreements between labor organizations and employers in the private sector. In other words, the prevailing wage in any community is going to be based on union wages in that locality. Often times, these wages are grossly disproportionate to what non-union labor would cost in the locality.

These wages can increase the costs of a public works contract by up to 20-30 percent. Even when compared to other states with prevailing wage laws, local governments in New York experience higher costs on public works projects due, in part, to the method utilized to calculate prevailing wage.

Meaningful prevailing wage reform will lower the cost of vital public works projects thereby resulting in lower real property taxes. Since 1979, eight states have repealed their prevailing wage laws, and nine other states have no such law. (http://www.alleghenyinstitute.org/reports/02_02.pdf). We would need a constitutional amendment to repeal our prevailing wage requirements but reform is within the reach of the legislation.

Reform Suggestions

Exemptions for low cost projects

Establish a monetary threshold on the work to be performed that would trigger prevailing wage requirements. For example, Pennsylvania exempts projects up to \$25,000, Maryland and New Hampshire exempt projects under \$500,000. New York imposes prevailing wage on every project. Exempting smaller projects would reduce the cost on all public works below the threshold.

Changing the calculation of prevailing wages

Changing the definition of “prevailing wage” in the Labor Law to more accurately reflect true wages, not union wages, paid in the locality would also provide relief from this mandate. For example, the Federal Government does a salary survey to determine the prevailing wage while New York looks to union contracts.

Temporarily Freeze Prevailing Wages

The State of Michigan suspended its prevailing wage rate law from December 1994 to June 1997. According to a study, "Prevailing Wages: Costs to State and Local Governments", conducted by Frank Gamrat, Ph.D., of the Allegheny Institute for Public Policy, from December 1994 to June 1997, the period during which the law was suspended, 116 new construction jobs emerged for every 1,000 jobs overall, a 48% increase over the 30 month period before Michigan's moratorium in addition the taxpayers saved an estimated \$251 million dollars.

WICKS

(General Municipal Law, §101 (Added L.1953, c. 861, §18))

Overview of Wicks

The Multiple Prime Contracts Requirement, commonly known as the “Wicks Law”, requires towns to separately bid the plumbing, the electrical and the heating, ventilation and air conditioning (HVAC) work on projects with an aggregate cost exceeding \$50,000. Moreover, the towns must often bid at least one additional contract to a general contractor for the remainder of the project (e.g. foundation, structure, roof and interior finishing). The Wicks Law is a particularly onerous burden for towns because most towns must hire a project engineer or manager to oversee and coordinate the work of the four prime contractors.

Relief from WICKS works

Several school districts have received legislative relief from Wicks Law mandates. For example, New York City Schools have been exempt from the Wicks Law since 1988 and report a savings to the taxpayers of \$192 million over a 10-year period. Further, it is estimated that construction time on a project without the Wicks mandate would be reduced from 49 months to 24 months. In addition to New York City, the Niagara Falls and Buffalo School Districts have also obtained exemptions. In 1996, the Niagara Falls City School District reported a 15 percent cost savings to the taxpayers as a result of using a single prime contractor.

Cost of WICKS Compliance

A 1987 report issued by the NYS Division of the Budget determined that the Wicks Law drives up public construction costs by \$300 million every year. The report indicated that taxpayers could save 20 to 30 percent on public works projects were it not for Wicks Law mandates.

Suggested Reform

Repealing Wicks Law would allow public entities to bid for a single prime contractor who has the ultimate responsibility for hiring and overseeing the subcontract work, saving time and money on public works projects. Protections inherent in General Municipal Law §103 would continue to operate as a safeguard against collusion and to ensure openness and fairness when bidding such projects.

Increasing the monetary thresholds that trigger the application of Wicks Law would also offer some relief to municipalities. These thresholds have not been increased in over 45 years, and should thus be increased to more accurately represent the present costs of undertaking such projects. These thresholds should, however, be uniform across the state to encourage cooperation across counties and regions.

Personnel

Pension – New Tier V

The State could lower real property taxes by establishing a new Tier V in the State and Local Government Pension Plan.

Applies prospectively

The new tier would apply prospectively to new employees.

Choice of Plan

Employees could be provided a choice of a (1) **defined contribution plan** which might be more attractive to younger mobile workers and to older workers looking at public service as a second career or (2) a **defined benefits plan** which would remain guaranteed but would be scaled back to the **pre-2000 level** - containing provisions that would stabilize employer contributions, increase employee contribution rates, and providing for employee contributions throughout their active service.

GML 207-c Disability Benefits for Law Enforcement

General Municipal Law §207-c provides for the payment of benefits equal to the full amount of salary and wages to a police officer who is injured in, or becomes ill as the result of, the performance of his or her duties. These enhanced benefits apply to all injuries incurred in the performance of the officer's duties and not only to those that involved a heightened risk of injury. *Matter of Theroux v. Reilly et al.*, 1 N.Y.3d 232 (2003). The payment of the full amount of salary and wages is non-taxable and continues until the officer returns to work, or fails to return to work even though physically able to do so; is granted a disability retirement; or attains the mandatory service retirement age. Municipal budgets are often hit twice for this liability, for not only are they paying the full salary of an officer unable to work, but often that of another who is needed to fill the vacancy left by the 207-c absence. Although the municipality has the authority to submit an application for disability retirement on behalf of a permanently injured officer, the process for approving disability retirement requires cooperation on the part of the officer. As the injured officer is receiving his or her gross salary tax free, there is no incentive for that officer to cooperate in the process. In that 207-c benefits are discontinued upon the granting of the disability retirement, the injured officer has a financial incentive not to cooperate in, and even in some cases to contest, the approval process.

Suggested Reform - Automatic transfer to State disability retirement program

While recognizing that police officers provide a vital service to local governments, the State could lower real property taxes by amending General Municipal Law, §207-c to require that disability retirement benefits be extended to any law enforcement officer who has been receiving GML, § 207-c benefit for a period of 36 months without the ability to return to work.

Restore Balance in the Collective Bargaining Process

Binding arbitration

Require arbitrators to first and foremost consider the taxpayers ability to pay without increasing taxes.

Repeal the Triborough amendment

Since 1982 and the adoption of the Triborough Amendment, §209-a (1)(e) of the Civil Service Law (CSL) has mandated that a public employer continue all terms of an expired agreement during any impasse. This has undermined - at considerable expense - the ability of town boards and all local legislative bodies, school boards in particular, to exercise the authority otherwise provided by CSL, §209, to wit: that "the legislative body shall take such action as it deems to be in the public interest, including the interest of the public employees involved". Repealing or reforming the application of the Triborough Amendment could encourage local governments and employee representatives to work more closely together in order to achieve an agreement that is fair to both the employees and the taxpayers.

Control and Manage Local Employees Locally

Allow local governments to determine the benefits that can be afforded locally such as retiree health insurance and police discipline.

Restore Code Enforcement Aid

The State raises revenue by collecting a 2% surcharge on all commercial fire insurance premiums as directed by the Insurance Law, §9108. The legislative intent of the law was that money collected from this fee would be used for the assistance of code enforcement. Local governments (cities, towns and villages) began receiving this revenue in March of 1982 until 1991 when it diverted to the General Fund. It is estimated that local governments lose \$10 – 20 million annually as a result of State action to divert code enforcement aid revenues into the general fund.

Enacting Low Volume and Minimum Maintenance Road Standards

Local Governments in New York State must construct and maintain their highways in accordance with generally accepted engineering practices. The American Association of State Highway and Transportation Officials (AASHTO) publishes highway design standards that are routinely looked to by the courts when called upon to determine whether a local road was properly designed and maintained. AASHTO includes design standards provisions for rural low volume roads. Many rural town governments cannot comply with these guidelines for the construction and maintenance of town highways. It would cost millions if not billions of dollars to upgrade New York's 90,000 miles of county and town roads to meet the American Association of State Highway Transportation Officials (AASHTO) minimum standards.

New York State Local Road Classification Task Force

Twenty years ago New York State examined this issue. Art. 16-B of the State Executive Law established the New York State Local Road Classification Task Force. The Task Force developed guidelines which incorporate a design process for rehabilitation projects on low traffic roads, including recommendations for pavement width, bridge width and roadside clear zones. In 1990, the Legislature established the NYS Local Roads Research and Coordination Council to continue the work of the Task Force. The Council revised and distributed the Task Force guidelines to be used voluntarily by local governments. Many local governments have enacted these standards. Unfortunately, these standards were never completely incorporated into the Department of Transportation's Design Manual. Therefore, local governments enacting local laws in accordance with the Task Force guidelines which were not fully incorporated into the DOT Highway Design Manual remain concerned over potential liability in that the Task Force guidelines differ from current AASHTO standards.

Suggested Reform

One way to lower real property taxes would be to enact appropriate enabling authority for local road classification as recommended by the NYS Local Road Classification Task Force and the Legislative Commission on Rural Resources. Proper enabling authority will permit local government to rationally reduce to more appropriate levels, the costs of maintenance and repair of such low volume roads.

III. Real Property taxes

Background information

According to ORPS, in 2006 there were 4.5 million (4,533,319) tax-exempt parcels taking over 700 million (\$738,047,647) off the tax roles. This does not even cover restricted assessments that apply to certain types of property (e.g., condominiums), tax abatement programs, and formerly real property that have been statutorily redefined as personal (non-taxable) property (e.g., certain switching equipment owned by telephone companies). Restricted assessments, tax abatements, and statutory redefinitions, like exemptions, are tax expenditures in that they reduce or shift tax liability.

The Association of Towns has consistently requested that the state comprehensively address our real property tax system. We all agree that real property taxes are high and quickly becoming unaffordable for many. A cynic might opine that the reason the legislature has not addressed the situation is not due to a lack of information but rather a lack of political will. A tax exemption is not a tax break but rather a tax shift and there are winners and losers. The winners understandably don't want to become losers and it's politically easier to provide tax relief than it is to eliminate it.

As I said, the information is out there. In April of 2006 the State Comptroller's issued a Local Government Issues in Focus report on Property Taxes in New York State. ORPS annually publishes data on real property tax and assessment. There are a variety of reports issued by public policy institutions

such as The Nelson A. Rockefeller Institute of Government State University of New York, Citizens Budget Commission, Public Policy Institute, and Empire Center.

The legislature has examined the state of real property taxes for decades most recently, Sandy Galef, Chair of the Assembly Committee on Real Property Taxation has been holding hearings on a variety of real property tax issues. Prior to that, the legislature held hearings on a package of bills to address inequities in the real property tax exemption laws and their administration, as well as a whole host of one-house real property tax relief bills. Despite the legislature's recognition of the burden exemptions put on the real property tax system they continue to adopt legislation that weakens local tax bases. In the last legislative session the legislature enacted scores of property tax exemption bills providing new exemptions or providing further relief by shifting taxable status dates.

In 1993, Governor Cuomo's Panel on Real Property Tax Exemption and Classification Issues examined this issue in depth and issued 20 recommendations to improve the real property tax system and administration thereof. In the last decade, few if any of these recommendations were enacted. In 2007, Senator Little and Member of Assembly Galef introduced legislation to establish a Blue Ribbon Commission on Real Property Taxes - we support this legislation with an amendment to allow local government associations to participate in the Commission.

Suggested Reform

Pass the Taxpayer Equity Legislation

We recommend looking at the taxpayer equity legislation that was introduced in 2003 which was intended to reform real property tax exemptions or the recommendations offered by Governor Cuomo's Panel on Real Property Tax Exemption and Classification Issues.

Closing the Condominium Assessment Loophole

(Real Property Law, §339-y and Real Property Tax Law, §581)

Section 339-y of the Real Property Law mandates that all condominiums be assessed artificiality, resulting in the reduction in the assessments of condominiums of-at least one-third. (The Office of Real Property Services reports a tax shift of over \$38 million annually.) With their reliance on the real property tax base, town governments need to be able to assess these properties fairly at their true market value, so as not to lose this important source of tax revenue (at the expense of the remaining property taxpayers). The goal of promoting condo development through favorable assessments outlived its usefulness long ago.

Fund Exemptions with State Revenues – STAR-like system

Real Property taxes could be lowered if the State funded exemptions and their administration with State revenues.

Blue Ribbon Commission on Real Property Taxes

Pass legislation and fund the blue ribbon commission on real property taxes.