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The County Perspective

2015-16 Executive State Budget Proposal

Testimony
submitted by
the

New York State Association of Counties
and the
New York State County Executives Association

To the Joint
Legislative Fiscal Committees

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LOB, Hearing Room B

Hon. Anthony J. Picente, Jr., NYSAC President
Stephen J. Acquario, Executive
Director

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Thank you Chairman DeFrancisco, Chairman Farrell and the other members of the Joint Legislative Budget Committee. I am here with NYSAC President Anthony J. Picente Jr., of Oneida County. My name is Stephen Acquario, Executive Director of the New York State Association of Counties. We appreciate the opportunity to testify today.

First let me say how much we appreciate that your committees have provided this opportunity to gather feedback on the State Budget.

In recognition of time constraints I will summarize my written remarks to leave time for any questions the Committees may have.

Impact of the 2015-16 State Budget on Counties

Our counties would like to acknowledge the Governor's and your continuing efforts to help us manage our budgets by recognizing that State requirements on counties to finance and administer state programs has a direct impact on local property taxpayers. Addressing this linkage is crucial to reversing New York's highest in the nation property tax burden. Lowering county costs can lower property taxes, and that should be our collective goal, not just slowing the rate of growth in future property taxes.

We believe the intent of the Governor's Budget proposal is to impose no new mandates on counties and provides important fiscal relief and stability.

Anthony J. Picente, Jr., NYSAC President

<u>OCFS Facility Charges</u>

NYSAC strongly supports the Governor's decision to cap county liabilities for retroactive and prospective reimbursements back to the state for youth placed in state facilities operated by OCFS. It is important to recognize that counties do not control these placements – they are made by Family Court judges. Once made, the state and counties split the costs.

The Governor and Legislature implemented significant reforms to this program area under the Close-to-Home initiative underway in New York City. As part of these reforms, the State worked to consolidate underused facilities and shed excess capacity. This was done to reduce costs and end the practice of the state billing counties for the cost of operating under-occupied or empty state facilities. The Governor's proposed budget builds on the promise of these earlier reforms and locks in a known dollar amount for potential county costs in the future, while waiving excess retroactive billings to counties, all within the parameters of the current State Financial Plan.

Raising the Age of Criminal Responsibility

Counties have supported the public policy goals of raising the age of criminal responsibility from 16 to 18 for nonviolent offenses, but we have also consistently raised concerns about the costs of such actions and the capacity and desire of service providers to deliver necessary services to all of these individuals and their families.

The Governor's proposed budget supports the NYSAC position that under any effort to raise the age of criminal responsibility the State should finance the entire increase in costs of that public policy change. NYSAC strongly endorses and has long advocated that the governmental entity that makes legislative and public policy decisions should also be responsible for paying for them.

We believe the Budget language needs to be crystal clear that all incremental costs related to this public policy change be paid in full by the State. Current language is not clear, especially in regard to the near certainty that many counties will need to expand their existing staff permanently in order to handle the influx of individuals and their families that will require an entirely new set of services. Adding to staff will provide reimbursement challenges in that current, seasoned staff in some county departments will need to be diverted to address the unique needs of this population, and new staff will need to be hired to backfill for these diversions. A clear process needs to be developed to ensure new costs are not placed on local taxpayers to support a state initiative.

In addition, the process of expending local dollars in the first instance and then waiting for reimbursement from the state will pose significant property tax cap challenges and cash flow issues for many counties. The Division of Budget estimates the costs of this public policy change will approach $400 million in just a few years. Assuming that about half of this expense will be incurred outside New York City (i.e., counties subject to the tax cap) this potential $200 million new expense could present significant barriers if reimbursement of claims lags significantly.

The current statewide county property tax levy is about $4.9 billion. With a tax cap of 2 percent or less, total allowable growth across all of the counties is about $100 million. As you can see, absorbing $200 million in new costs plus all other increases a county budget may have to absorb beyond that inside a $100 million cap is problematic.

If quick reimbursement is not feasible, we suggest the State prefund the costs of this initiative through an escrow account from which counties will draw down funds as services are provided and then follow this up with a reconciliation to ensure appropriate claiming.

This public policy goal is critically important and should be pursued in a way that ensures the greatest likelihood of success. This will require a lot of coordination, planning and an unwavering fiscal commitment from the State. The key to this initiative is ensuring that once a child is diverted away from criminal detention that a full slate of services are available to the child and their family.

NYSAC appreciates that county officials were members of, and actively consulted by, the Governor's Commission on Youth, Public Safety and Justice. Their recent report highlights that building provider capacity is critically important. Nearly half the counties have one or fewer providers within their borders equipped to provide the envisioned comprehensive services. Building robust provider capacity in all regions of the state must be a top priority and we support the Governor's first year appropriation to begin the process of training and building capacity. We look forward to working with the Governor and Legislature on implementing this initiative.

Stephen J. Acquario, Executive Director

Property Tax Relief

NYSAC believes the best way to provide property tax relief is to address its root cause by eliminating the cost drivers. For counties, our ability to lower costs is directly tied to the amount we pay for services that counties provide on behalf of the state. We do not control the scope or the costs of these services, therefore we cannot reduce them and the amount of property taxes that must be devoted to them.

The Legislature and Governor implemented the property tax cap and freeze to address the rate of future growth in property taxes. Unfortunately, when your taxes are significantly higher than the national average, slowing the future growth rate in those taxes is still going to leave New York far behind other states in regard to high property taxes, potentially for decades to come.

Cutting property taxes from today's level is critically important to addressing this dynamic. State policies must be changed so there is less reliance on using local property taxes to support statewide policies and objectives. We compare our property tax rates to other states, but we fail to compare how New York pays for its governmental services. New York counties spend more on Medicaid than all the counties in the rest of the country combined. Counties in New York pay for preschool special education services that no other county in the country (that is not also the school district), to our knowledge, pays for.

When New York State requires a local government to pay for something that local governments in other states are not required to pay for in a similar fashion – this contributes directly to New York's highest in the nation property tax burden.

The Governor's budget calls for an expanded income tax credit based on the amount of property taxes home owners pay. While the Governor's proposal would reduce many individual's overall tax burden, it will not reduce property taxes nor would it change New York's standing in comparison to other states' property tax burden.

As an alternative to the Governor's $1.7 billion income tax credit proposal, NYSAC would ask the Legislature to consider lowering county Medicaid costs in areas subject to the tax cap in a similar dollar amount to the Governor's proposal. The state could then adjust county property tax caps to ensure that as the state reduces county costs it is reflected in local tax caps, leading to lower property tax bills.

With the total Medicaid burden in areas subject to the tax cap coming in at $2.1 billion, the Governor's proposal provides nearly all the resources necessary to eliminate the largest unfunded mandate local property taxpayer's shoulder.

This would lower property taxes for all homeowners and small businesses proportionate to the Medicaid burden in each county. It is also less complicated and far more transparent for taxpayers then paying higher property taxes in the first instance and waiting to receive an income tax credit a year later. Separate tax relief for New York City residents would have to be considered as well since they are not subject to the tax cap.

<u>Use of Bank Settlement Funds</u>

The Governor has proposed a very broad outline of how he would like to use the one-time bank settlement funds. Counties support:

- Targeting of funds for broadband deployment in underserved areas,
- Creating an incentive fund to foster shared services and government efficiencies,
- Setting aside a portion to respond to emergencies and natural disasters, and
- Recognizing the need to support critical regional infrastructure projects that will benefit the New York economy overall.

However, we believe more funding needs to be targeted to locally-owned and maintained roads, bridges and other critical infrastructure. Eighty-seven percent of the State' 110,000 miles of roadways and 50 percent of the state's 18,000 bridges are locally-owned and maintained. Much of this system is in need of repair, improvement and expansion.

Local and state funding to support local roads and bridges has been negatively impacted by the recent recession and the implementation of the property tax cap. In addition, for the past two years, the federal transportation aid allocation to New York has been primarily directed to the major systems (interstates, arterials, expressways and major urban connectors) and away from locally- and even state-owned bridges resulting in as much as 40 percent less in federal dollars available for local projects. Under these circumstances we believe the Governor's proposal should be modified to direct a larger share of these one-time proceeds to local infrastructure needs.

Preschool Special Education

Counties strongly supported the rollout and 100 percent state financing commitment for universal prekindergarten for all four year olds across New York State. Counties do remain concerned, however, that this state expansion is leaving behind children with special needs in a separate program and as a result will further widen New York's implementation gap with the intent of the federal Individuals with Disabilities Education Act (IDEA) in that children with special needs should be accommodated in the least restrictive setting and alongside their peers. We will continue to work with the Legislature to ensure these two programs are streamlined as much as possible – both programmatically and fiscally.

We are also encouraged by reforms to SEIT preschool special education rate-setting that will require that reimbursements are made only for actual services delivered. Currently we use a tuition rate methodology for reimbursement to providers based on an individual education plan for each student, but oftentimes students or providers have unavoidable absences and services in the plan are not delivered.

NYSAC also supports the Governor's 2015-16 budget proposal to implement regional rates for SEIT providers. Under the current system providers can be reimbursed vastly different rates even though they serve children with the same needs in the same community – leveling the playing field will strengthen overall provider capacity and quality.

Safety Net Public Assistance

A few years ago, the State increased the county share of Safety Net funding to 71 percent and reduced the State share to 29 percent. Initially this was offset by fully federalizing both State and local TANF costs. Counties strongly objected to this change at the time and it is becoming a significant challenge for many counties. Counties are urging the Legislature to gradually restore the historic 50/50 funding shift.

Local Departments of Social Services warned that this funding shift would expose counties to huge costs increases in the future because the caseload and costs for Safety Net (which, unlike TANF, have no time limits on eligibility) were growing at much faster rates than TANF caseloads. Over the last five years, Safety Net costs have increased by more than 25 percent, while TANF and Family Assistance costs have actually declined.

This leaves counties paying 71 percent of a fast growing program where nearly all aspects of program eligibility and benefit levels are controlled by the state. Over 40 percent of counties responding to a recent survey (30 responded) are budgeting double digit increases in their Safety Net costs in 2015 compared to 2014, many counties have seen their costs and caseloads increase by double digits in one or more years since the state cost shift occurred.

This Safety Net funding shift is part of a long string of decisions by the State to gradually walk away from its constitutional responsibility to care for the needy and place most of this funding responsibility on local property taxpayers. This dates back to federal welfare reforms in the late 1990's when the state began to leverage newly available and highly flexible federal resources to lower state costs on a disproportionately larger scale than for counties (i.e. the state kept most of the savings for itself and provided little benefit to counties).

Today, we are left with a public assistance program that is wholly designed by the state, where local taxpayers support 71 percent of nonfederal costs and the state supports only 29 percent. By not sharing these federal resources equally with counties, local taxpayers are forced to cover hundreds of millions of dollars each year in what should be state costs.

Counties are strongly urging the Legislature and Governor to restore historic funding shares to 50/50 and provide much needed relief to local taxpayers.

Indigent Defense

Indigent defense is a State requirement under the Federal Constitution. In New York, the state has mandated that indigent defense services be delivered and funded at the county level.

Last fall, the state settled an indigent defense lawsuit that involved five counties. Counties encourage the Legislature to support full state funding for the requirements of the Hurrell-Harring settlement, and also to begin to lay the groundwork to support similar funding for all counties.

The settlement requires that the five counties involved provide new indigent defense services and standards. These include caseload caps for public defenders as well as a requirement to provide counsel at first arrangement at all times, including weekend coverage. These new programs will need funding.

It is also anticipated that the demand for these new indigent defense services and standards will become required of all 57 counties in the near future. The Office of Indigent Legal Services (OILS) is requesting that the State pick up the costs of these new standards for all counties outside New York City. NYSAC supports this request.

According to OILS, covering a case cap workload for all counties outside NYC will cost approximately $105 million annually. As OILS has suggested, this can be phased in over five years.

In addition to new indigent defense services and standards, there is still the matter of the approximately $150 million that counties outside New York City pay annually for indigent defense service.

Accordingly, the existing funds counties are paying into this program should be taken over by the State. No longer should this vital service be paid for through local property tax dollars.

The goal should be for the state to gradually takeover all of the costs of indigent criminal defense services as envisioned under federal law and as implemented in most other states.

The 2015-16 state budget will be the starting point for fundamentally altering the justice system in New York to ensure fair representation for all individuals. Counties support the development of a state aid funding roadmap to implement these reforms statewide and to lay the groundwork for a full state takeover of these costs.

<u>Home Rule and Local Sales Tax Authority</u>
Counties continue to struggle with balancing their budgets, while maintaining strongly desired local quality of life and public health and safety services. This is increasingly difficult in light of state mandated costs increasing beyond the rate of growth in local tax receipts.

The "Great Recession" exposed fundamental weaknesses in state and local budgeting practices that required a significant redesign of government finances. As a result of the recession and its' lingering impacts counties have experienced several years of below normal revenue growth, significant cuts in state reimbursement (between 2008 and 2012 state reimbursement to counties was cut by nearly $350 million annually without an equal reduction in state mandated costs or responsibilities during this period). This has been exacerbated by increasing human services caseloads and costs counties are required to administer and finance with local tax dollars.

As a result, counties are renewing their efforts in support of past proposals from the Governor and New York State Senate to allow counties to renew their existing sales tax rates every two years locally, without the need for State Legislative action. Ideally, this could be handled through an omnibus bill that extends all counties' existing sales tax rates permanently and also allow the handful of counties with sales tax rates below 4 percent to adjust those rates up to, but not in excess of 4 percent if they deem it appropriate. Any increase up to 4 percent would require the same approval parameters imposed under the State property tax cap—a super majority vote of 60 percent of the local governing body. Currently, nine counties are below the four percent local rate (four are at 3 percent, two are at 3.5 percent and three are at 3.75 percent) – not including the MTA Commuter District 3/8 percent tax in Dutchess, Orange and Westchester.

Counties with Local Sales Tax Rates Below 4 percent		
County	**Rate**	**Effective Date**
Saratoga	3.00%	June 1, 1982
Warren	3.00%	March 1, 1968
Washington	3.00%	September 1, 1970
Westchester	3.00%	March 1, 2004
Chautauqua	3.50%	December 1, 2010 (reduced)
Ontario	3.50%	September 1, 2009
Dutchess	3.75%	June 1, 2003
Jefferson	3.75%	September 1, 2004
Orange	3.75%	June 1, 2004

<u>Improve Property Tax Cap</u>

As enacted the property tax cap law did not foresee several unanticipated consequences that have been exposed over the years during implementation that should be clarified and will improve the law.

- Municipalities should be able to exempt capital debt from the formula, just as schools are allowed to do. It is not uncommon for a large share of new county debt to be the result of State requirements (such as expanding or upgrading a jail or courthouse).

- Increases in PILOT revenue should not be included in the tax cap formula. One of the major benefits of new development in a community is increased revenue to improve government services. The current law limits the constructive utilization of such revenue increases by forcing most new PILOT revenue to be used to artificially lower property taxes (all of which pay for the state's costs anyway).

- The court ordered expense exemption should be extended to refunds ordered as a result of tax certiorari proceedings. Because of the way reserving works under the tax cap law, taxpayers could end up paying for such refunds twice -- taxpayers would be refunding money to the plaintiff, then paying that money again into a reserve when the tax levy limit is recalculated retroactively by the State Comptroller (we believe this is an unintended consequence of the current law).

- Emergency expenditures related to repairing and/or replacing equipment or public infrastructure that is destroyed by a natural disaster or other unforeseen event.

- The administratively imposed "lookback" period of January 2012 established by the Division of the Budget related to eligible shared services and government efficiencies necessary to qualify for the property tax freeze credit must be modified to include time periods back to the start of the Great Recession at a minimum and there should be no timeline for projects or programs that are considered fundamentally groundbreaking or unique and are models for other local governments.

IDA Reforms

The Executive Budget would require that the Empire State Development Corporation (ESD) approve any IDA project that provides a state and local sales tax benefit and would grant ESD authority to consider whether the benefits granted would provide a competitive advantage over an existing business. We oppose the ability of ESD to hold up the approval of projects to which the IDA intends to grant incentives. We would prefer that if the state wants to have a say in the approval of its share of the incentive offered it does so on its own and does not have the final say as to whether or not the project can receive any local incentive.

Further, as to the review of advantaging one business over another, we would hope that the state would be more vigilant when awarding incentives of its own to not advantage one location in the state over another to avoid situations where a currently operating New York based business is encouraged through state incentives to relocated or expand away from its existing location.

Community College Funding

State law envisioned the State would provide one-third of the costs of every community college. However, the State has long fallen short of that number and provides funding in the 22-24% range. The Executive Budget proposal does not appear to include any funding to increase the percentage of costs covered by the State. When the State does not pay its' promised share the students and local property taxpayers are unfairly forced to make up the difference. We urge the Legislature to increase community college per student state aid.

Other Items

Counties also support budget language that would moot an existing court case in relation to the requirement that counties pay 100 percent of the cost of "immediate temporary personal care services" when it is later determined that these individuals are ineligible for Medicaid. These costs would be incurred by counties over and above existing Medicaid local shares caps and are expected to be in the tens of millions of dollars annually and likely grow significantly from that level.