

REFORMING AND RE-IMAGINING GOVERNMENT SERVICE DELIVERY

Part I: Overcoming the Current State-Local Budget Crisis

Interim Draft County Recommendations

AUGUST 2020

HON. JOHN F. MARREN

President, NYS Association of Counties

HON. DAN McCOY

President, NYS County Executives' Association

STEPHEN J. ACQUARIO

Executive Director

Counties Working For You



540 Broadway, 5th Floor
Albany, NY 12207



www.nysac.org



518-465-1473



Introduction

The COVID-19 pandemic has wrought two distinct crises: the first, a public health crisis on a scale not seen in a century; the second, an economic crisis of unprecedented breadth and speed.

The response to these twin crises fell primarily on local governments. Since the beginning of the virus’s arrival on our shores, New York’s counties have been working in the trenches every day, leading the core public health response to the pandemic and providing direct services to residents. Counties are also on the front lines of the economic response, helping businesses reopen as safely as possible so that New Yorkers can get back to work.

As the State adopted social distancing measures to stop the spread of the virus, counties and New York City saw massive declines in sales tax revenues which comprise a significant portion of their annual budgets. Currently, counties and New York City are facing a \$14.5 billion revenue deficit over the next two years—and towns, cities and villages are also facing shortfalls.

Compounding the impact of local revenue shortfalls, New York State is facing a current year revenue decline of \$14.5 billion, and a four-year shortfall of \$62 billion. In the absence of Federal funding, the State has reduced spending through June by nearly \$4 billion by holding back 20% of payments to localities, among other actions.

In response to these declines in tax revenue and state reimbursements, every level of government is exploring ways to bridge this crisis and streamline operations as much as they can under state law without compromising local quality of life services.

In every crisis lies the seeds of opportunity. Counties and the State should use this disruptive event as a catalyst to reimagine state and local government in New York State, with a focus on reducing costs, increasing efficiency, and evaluating its effectiveness.

Contents

Introduction.....	2
County Sales Tax Actions.....	3
Property Tax Cap.....	3
Cannabis Legalization.....	4
Borrowing Authority	4
Thruway Tolls.....	4
Create Blue Ribbon Commission to Redesign State/Local Service Delivery....	4
Program Reforms to Lower Costs.....	5
Children with Special Needs	5
Community Colleges	5
Environment.....	6
Gaming.....	6
Medicaid.....	6
Personnel/Labor	7
Public Health.....	7
Public Safety.....	8
Social Services.....	9
Transportation and Infrastructure	9

This report outlines several proposals to reform and re-imagine state and local government service delivery. It is our hope that by implementing these reforms, we can spare New Yorkers from additional and unnecessary suffering in the form of increased property taxes or reduced services and can begin the process of improving government for the better, for all New Yorkers.

Interim County Recommendations

County Sales Tax Actions

The state is now diverting or directing local sales tax revenue to be used for specific state objectives: including assistance and incentives for municipalities (AIM) and a distressed hospital fund. These diversions take more than \$484 million annually in locally raised revenues from counties and New York City. Local sales taxes are intended to provide the least burdensome way of financing local government operations, support state required spending and keep property taxes lower. Diverting these resources jeopardizes local services and drives property taxes higher. County leaders have recommended the following changes to the state's sale tax policies.

- Grant permanent sales tax authority for all counties for a local sales tax at their existing rate or up to 4 percent, similar to the authority already granted to NYC.
- Temporarily increase the sales tax rate (for a period of three years) by 1 percent in total, split evenly between the state and county to coincide with the COVID-19 pandemic.
- End the diversion of county sales tax for purposes of making AIM-related payments to towns and villages. The state can provide counties the option to make AIM-related payments to downstream governments if the county chooses to do so.
- End the diversion of county sales tax to support distressed healthcare facilities as funds have been made available through federal coronavirus assistance.
- Authorize gig economy industries, such as VRBO, AirBnB, and other vacation and home rental agencies, to collect sales tax (outside of New York City). Presently AirBnB has a mechanism through voluntary collection agreements with counties to collect occupancy taxes; however, current law prohibits the collection of state and local sales tax, costing local governments millions in potential revenue.
- Allow counties to set other home rule revenue tax rates up to the most common rate existing in other counties across the state without state legislative approval. This would include, but not be limited to, sales tax, mortgage recording taxes, occupancy taxes, real estate transfer taxes, etc.

Property Tax Cap

- Temporarily grant counties the flexibility to exceed the property tax cap without penalty if state aid is reduced by the projected 20% or other county revenues are 95% or less of budgeted estimates.
- Exclude PILOT agreements from the tax cap formula. To encourage economic growth in their communities, counties often include a PILOT agreement as a means for a new revenue stream – typically on a parcel of land which has not been generating tax revenue for the county. However, the benefits of a PILOT agreement quickly disappeared after the property tax cap was established because governments are required to reduce their property tax levy by the value of the new PILOT agreements. Excluding PILOT's from the tax cap formula would aid counties in raising revenue, while also incentivizing economic growth and prosperity.



Cannabis Legalization

- Legalizing adult-use cannabis will provide the state and counties with resources for public health education and technical assistance. Counties should be allowed to apply their local sales tax rate on these transactions. In addition, the cannabis cultivation tax should be shared with the county in which the product is grown.

Borrowing Authority

- Grant NYC and NYS Counties with a temporary ability to borrow money over a longer period of time to cover operating expense due to a loss of sales tax revenue resulting from the COVID-19 pandemic.

Thruway Tolls

- Increase interstate tolls for out-of-state residents as a means to increase funding for the Bridge NY, CHIPS, Extreme Weather programs as well as state DOT infrastructure repairs, a supplemental toll should be levied against drivers from out-of-state. NYS residents should not be forced to bear a greater burden to maintain our roads while out-of-state motorists pay the same fare.

Create Blue Ribbon Commission to Redesign State-Local Service Delivery

Currently, counties are required to fund and administer numerous state programs that are fiscally unsustainable and damaging to our economic competitiveness. Additionally, the current system relies too much on a narrow local tax base to support state programs that local governments in most other states do not have to fund with regressive taxes.

To rectify this situation and strengthen the fiscal condition of counties as they move past the COVID-19 crisis, county leaders are recommending the creation of a Blue Ribbon Commission to fundamentally change how state and local programs are administered and funded.

The commission would be comprised of officials from the State Division of Budget, state agency officials, select state lawmakers, state education and school district officials, representatives from state and local governments, and health and human service program advocates.

The commission should be required to produce a report within 9 months or by November 30, 2021. The commission's findings must be included as part of SFY 23 budget proposal. The report must also outline concrete, manageable phases of implementation, and state and local governments should be incentivized to change operations to achieve the commission's recommended program and cost efficiencies.

The COVID-19 pandemic has provided us with an opportunity to reimagine and rebuild government for the good of New Yorkers, and we believe the commission will help leverage this opportunity.

Program Reforms to Lower Costs

Children with Special Needs

Counties are responsible for administering and funding a large share of the early intervention program, preschool special education and summer school special education for all of New York's children with special needs. New York State, meanwhile, is responsible for all program regulations, requirements, and contracting with providers. The State and school districts make program decisions; counties pay.

County leaders have submitted the following recommendations for lowering the cost of these programs for counties and local taxpayers.

- Allow telehealth services to continue for Early Intervention (EI) post COVID-19, as determined by the Individualized Family Service Plan (IFSP) process, to improve service availability.
- Increase county participation and vote on Committee on Pre-School Special Education (CPSE) committee to attempt to get the least restrictive and cost-effective assignment.
- Restore state level reimbursement to counties for preschool education services.
- Pre-K/EI NYS takeover of the entire local expense over a 5-year period.
- Require that school districts do Pre-school Evaluations for CPSE as a routine part of the CPSE process. This process should not be reimbursed by county funds.
- Enact a covered lives assessment on third party commercial insurance that matches the Medicaid rate of reimbursement (75%) and minimally provide the equivalent of 50% of eligible claims based on the number of enrolled children with third party coverage, equal to \$40 million.

- Cap, then gradually reduce, the county fiscal responsibility for paying for preschool and summer school special education programs.
- Allocate State funding for a 5% rate increase for services provided to children in high poverty areas and in rural areas that require service providers to travel long distances.

Community Colleges

- Modify the institutional classification of the Fashion Institute of Technology from a community college to a regular SUNY university.
- Ensure 100% state reimbursement to counties for students attending FIT for 4- and 6-year degrees if this institution is not reclassified as a regular SUNY university.
- Permanently set the base state aid formula allocation for each community college at 100% of the previous year or \$100 increase per FTE; whichever is greater.





Environment

- Appropriate \$3 million in the SFY 2020-21 State Budget for continued reimbursement of expenses incurred collecting and recycling e-waste.
- Expand the NYS Returnable Container Act (“Bottle Bill”) to include more glass containers, such as liquor, wine, and tea bottles, to support local recycling programs during the global recycling crisis.
- Roll out the state mandated State Drinking Water Information System (SDWIS) that has been delayed. This would result in eliminating considerable data entry and allow counties to spend more time on other program tasks.
- Delay compliance and/or adjust the new nutrient limits that are being imposed statewide on public water and sewer systems.
- Continue and expand state/federal investment into COVID-19 environmental health surveillance through wastewater testing.

Gaming

- Allow the Seneca Nation to fund local governments directly and make counties whole for the past and current losses caused by this negotiation process while the State and the Seneca Nation continue arbitration over their gaming revenue compact. Revenue losses associated with this impasse represent approximately \$50 million annually to the 16 counties, and other host communities, in Western New York.
- Allow mobile sports gaming and share gaming revenue with all New York counties by including off-track betting corporations.

Medicaid

- Allow counties to share in a portion of the savings derived from implementing telemedicine for Medicaid cases when they partner with the private sector, state, 9-1-1 and other local services in

promoting this technology and normalizing this health care delivery mode.

- Complete unfinished Affordable Care Act federal enhanced Medicaid match reconciliations as soon as possible and make appropriate adjustments in local weekly shares.
- Lower existing county and New York City Medicaid statutory caps to reflect the savings provided by the Affordable Care Act.
- Place a 90-day cap on county medical treatment liabilities for inmates for which counties are required to fund through court-ordered inpatient hospital stays and competency/mental health examinations.
- Allow counties to mail postcard notification to Medicare Improvements for Patients and Providers Act (MIPPA) individuals instead of full Medicaid applications.
- Eliminate the need to annually calculate the amount of money collected from Medicaid spend down accounts (that allow individuals to be eligible for Medicaid) and compare the figures to the cost of Medicaid expenditures to determine if they are eligible to receive a reimbursement for the difference.
- Consolidate the Welfare Management System (WMS) into the Electronic Medicaid of New York (eMedNY) to make it easier for LDSS’s to handle cases.
- Have NYSDOH implement Community First Choice Option, not the local districts.
- Require NYSDOH to pursue collection and litigation for spousal refusal versus the LDSS.
- Require NYSDOH to pursue Right of Election.
- Require NYSDOH to take over cases where Medicaid incorrectly paid the provider.

- Discontinue the practice of re-certifying Supplemental Needs Trusts accountings.
- Enact 50-50 recovery partnership between counties and the state (through OMIG) to conduct retroactive and prospective reviews of county incarceration files to ensure Medicaid managed care companies were not inappropriately reimbursed for monthly premiums while an individual was in the county jail.
- The State must complete the takeover of the administration of the Medicaid program from local districts as required under the law. Counties have downsized their Medicaid administrative operations as part of the process so far, but the state continues to layer more responsibility for administering the most complex parts of the Medicaid program on counties. The state's objective was to reduce costs through improved efficiency by consolidating the administration at the state level, while also ensuring greater uniformity in the administration of Medicaid, which can only be fully accomplished if the takeover is completed.



Public Health

- Reform individual grants for public health work to a block grant, while maintaining funding level from the consolidated programs into the new block grant, similar to social services program areas, to allow for county flexibility and eliminate costly administrative work.
- Allow the New York State Commissioner of Health to align regulatory requirements with the limited scope of public health related clinical services provided by local health departments. The current standards that classify Local Health Departments as Diagnostic and Treatment Centers and Licensed Home Care Services Agencies under NYSCRR Title 10, Article 28 and Article 36 respectively, are no longer appropriate for the limited services they currently perform. The regulatory burden it imposes is excessively expensive, complex and time-consuming for the limited services being provided.
- Provide counties with funding assistance to meet the statutory changes associated with lowering the EBLL to 5 µg/dL. It is estimated that compliance with this new statute will require an additional \$36.6 million on an annual basis.
- Restore Article 6 reimbursement to New York City, which was reduced from 36% to 20% in the 2019-20 State Budget.
- Require the state to take the lead on public health investigations when a local health department indicates that it lacks the necessary capacity or jurisdiction to perform the investigation.

Personnel/Labor

- Amend Article 47 of the Insurance Law to allow municipal health consortia to start with fewer than the required 2,000 covered lives and less funding in reserves.
- Repeal or reform the Scaffold Law to include a pure standard of comparative negligence.
- Repeal or reform the Wicks Law so that all governmental entities can realize savings and project efficiencies in government construction projects.
- Personnel expenses are one of the highest cost drivers for county government. Most collective bargaining rules are dictated by state laws and provide county officials minimal leeway in controlling personnel costs. The state's Taylor Law, Triborough amendment and binding arbitration policies need to be modified significantly to help lower costs for local taxpayers.



Public Safety

- Amend Section 45-6, paragraph 6 of the Corrections Law or make regulatory changes in the NYCRR to grant counties the flexibility in establishing minimum staffing ratios.
- Allow and incentivize shared county jails. Change NYS statute, Commission on Corrections restraints and use shared services dollars to enhance net savings of counties sharing a jail.
- Reform Part 730 of the Mental Hygiene Law to mandate that NYS judiciary recall on a quarterly basis, individuals who have been evaluated and are in state custody and care so that the mental health condition can be evaluated and progress reports provided to counties of record.
- Eliminate the mandate that pre-sentence investigations must be conducted when a sentence of up to 364 days in jail has been negotiated.
- Reform the Raise the Age statute to raise the minimum age a youth can be charged as a JD from seven to twelve years old.
- Grant county probation departments the flexibility to quickly make an application for a temporary order of protection as a part of the adjustment process.
- Eliminate the requirement that there be a sentence of a conditional discharge or probation for Leandra's Law cases when a defendant has been sentenced to a definite jail term or a term of imprisonment.
- Stop requiring a Pre-Sentence Investigation (PSI) for Youthful Offender cases, unless probation or jail is being considered.
- Allow emailing of PSIs to courts, treatment providers, other probation departments.
- Eliminate requirement for annual re-assessments (COMPAS) for administrative cases.
- Ensure that local probation departments receive 100% of all pre-trial service costs including but not limited to probation personnel associated with bail reform.
- Establish a dedicated funding stream through DCJS/OPCA for 100% of all local probation costs including but not limited to probation personnel and evidence-based programming associated with the Raise the Age Law.
- Mandate that the state's evidence-based criteria should account for existing local best practice programs.
- Enable probation departments to make an application for a temporary order of protection as a part of the adjustment process.
- Authorize law enforcement agencies to issue appearance tickets, instead of physical arrest, when Adolescent Offenders and Juvenile Offenders are charged with most Class D felonies.
- Allow law enforcement agencies to deliver Adolescent Offenders, Juvenile Offenders and Juvenile Delinquents to detention facilities after business hours without a securing order until the next business day or until court is in session.
- No longer require every arrest to need a digital recording. Prior Discovery Law mandated digital recordings as needed based on the degree of the crime, not every arrest.
- Maintain the State's commitment to fully fund incremental costs for Raise the Age (RTA).
- Ensure that DASNY will be a viable and efficient vehicle for bonding specialized secure detention (SSD) expansion projects.
- De-link the state property tax cap and county eligibility for full reimbursement for state-mandated RTA costs.

- Amend the RTA law to allow 16-and 17-year-olds to be housed in special designated areas of the county jail.
- Amend state laws so video conferencing for criminal proceedings/arraignment can be at the discretion of the county or judge. Technology on these platforms has improved and counties would realize significant savings in transportation and security costs now incurred due to physically transporting incarcerated criminal defendants to court.
- Allow for court consolidation and the creation of district courts. Instead of 65 town and village courts you could have 6 at the most. With the changes to the discovery and bail laws, this would be an advantageous time.
- Restore SNAP administration reimbursement.
- Stop requiring counties without shelters to adhere to Code Blue requirements.
- Allow LDSS to have more influence on whether kids' diagnostics are done in placement vs. in a clinic.
- Review and reform the process for investigating cases coming from the DSS hotline.
- Change the current process that requires counties to make hard copies of all the documents associated with a case. This would save a tremendous amount of time of workers copying and physically mailing all the cases and will expedite the review process.
- Require adoptive parents to show that they provide significant support to a child to continue their subsidy. We have many cases where youth are in the military, and parents still receive a full subsidy.
- Eliminate the need for Safety Net recipients to comply with substance abuse recommendations before being housed. This requirement defies the housing first logic models and results in individuals cycling in and out of expensive inpatient programs.

Social Services

- Allow local training programs and virtual training so that counties do not need to pay for workers to travel to Albany for training.
- Do not offer home relief to those who have exhausted their 60-month limit on TANF.
- Restore county authority to audit individuals applying for Medicaid and other social service programs to ensure program integrity and that clients are not inappropriately made eligible for these programs. Prior to the state ending these program integrity efforts counties found that many individuals that were self-employed did not meet fiscal eligibility standards when a more comprehensive forensic audit was performed on the income of the individual applying – audits on these types of cases found that as many as 40 percent of applicants were ineligible due to understating income and assets.
- Restore home relief to 50/50 state and local match.
- Restore open ended child welfare funding to 65% state share.
- Restore state's participation in child support administration.

Transportation and Infrastructure

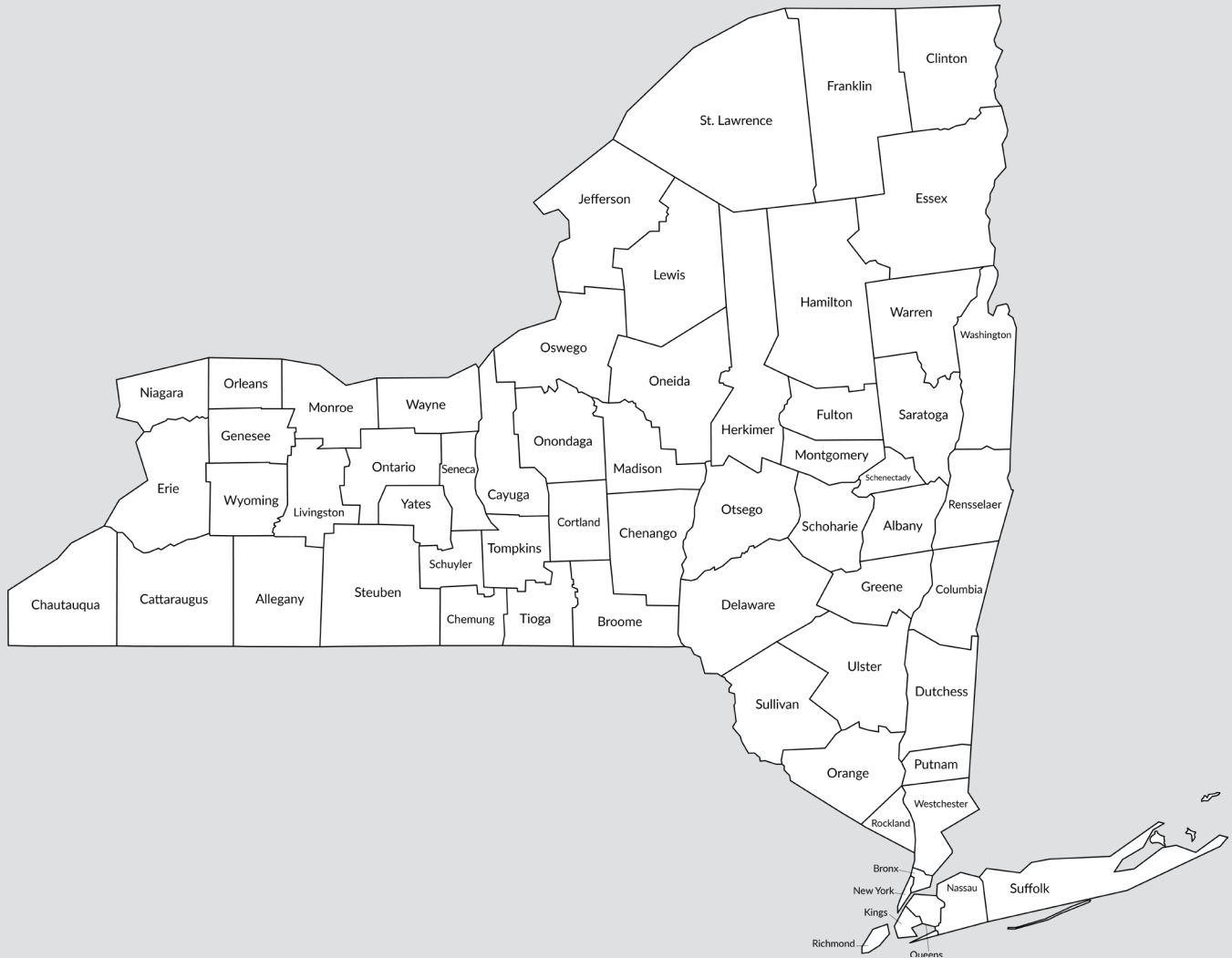
- Increase the statutory CHIPS bidding threshold from \$350,000 to \$500,000.
- Extend design-build to local government capital projects.





NYSAC
NEW YORK STATE
ASSOCIATION OF COUNTIES

Represent ▪ Educate ▪ Advocate ▪ Serve



Counties Working For You



540 Broadway, 5th Floor
Albany, NY 12207



www.nysac.org



518-465-1473