

NEW YORK STATE CONFERENCE OF MAYORS AND MUNICIPAL OFFICIALS



LEGISLATIVE PROGRAM

2010



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2010 LEGISLATIVE PROGRAM

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EXECUTIVE DIRECTOR'S MESSAGE

PETER A. BAYNES

The legislative priorities described in NYCOM's 2010 *Legislative Program* were developed in an open, deliberative meeting of the NYCOM membership. The common goal of each proposal is to provide city and village officials with the resources and flexibility to deliver essential municipal services in the most cost effective manner.

This, of course, can only be accomplished through a true partnership between the state and its local governments. Municipalities are not a special interest group, but rather the providers of services that directly impact the daily lives of each and every resident and business of this state. One can certainly make the argument that our local officials represent perhaps the biggest special interest group of all – New York's taxpayers.

Like many other communities across the nation, cities and villages throughout our state are plagued by fiscal stress, which has only been exacerbated by the current economic downturn that is affecting us all. As a result, the imbalance between the fiscal capacity of New York's municipalities and the cost of providing essential services continues to grow. When you consider the underfunded state aid, inefficient state mandates and restrictions on managing costs, it becomes clear why property taxpayers are overburdened, residents and businesses are leaving New York, and our economic centers are struggling. NYCOM believes that these challenges can be confronted through a combination of growing and predictable state aid, real relief from onerous state mandates, more affordable employee benefit options and an equitable balance between the negotiating power of public employers and employees. The Governor and State Legislature have begun to make progress in this regard, recently enacting pension and tort reform. Yet, much more needs to be done.

NYCOM is confident that if all levels of government work together, our cities and villages can lead New York into an era of revitalization, where our communities and our state have thriving economies and a high quality of life. At a time when New York and the nation are facing some of their greatest fiscal challenges, we look forward to working with the legislative and executive branches to achieve these important goals in 2010.



OVERALL PRIORITY

MAINTAIN COMMITMENT TO REVENUE SHARING

Support the maintenance of revenue sharing for all municipalities at 2009-10 levels and the fulfillment of the multi-year commitment to increases in the program once the state's fiscal picture improves. Revenue sharing, which was renamed Aid and Incentives for Municipalities (AIM) as part of the 2005-06 State Budget, has the potential to provide significant municipal property tax relief. For decades, the original revenue sharing formula – intended to redistribute state tax revenues to municipalities that do not have the tax base or the taxing authority to generate these revenues on their own – has been annually disregarded and various constraints have been imposed on the overall level of state aid to local governments. Although local governments have recently received increases, 100% of villages and approximately 80% of cities currently receive less aid than they did in 1989, when adjusted for inflation.

Despite this, however, AIM is a proven example of a property tax program that works. Results of NYCOM's annual budget surveys have shown that the AIM increases provided in recent years have helped to slow the growth in municipal property tax rates. Clearly, the state and its taxpayers are beginning to benefit from this modest, yet worthwhile, investment.

NYCOM supports the multi-year commitment to AIM increases authorized in the 2007-08 State Budget which would provide annual increases for the state's cities (outside NYC) and villages over a four-year period. Under this plan, the allocation of the annual increases is based upon specific "fiscal distress factors" applied to all municipalities. Since NYCOM has long argued that all cities and villages are contending – in differing degrees – with the same daunting fiscal challenges, we believe applying objective criteria to all levels of government,

regardless of class, is a step in the right direction to ensuring that each municipality receives the aid they deserve. However, there are other criteria that may be worth considering – particularly the types and levels of services each municipality provides (e.g., police, fire, water and sewer) and the amount of tax exempt property a municipality has within its boundaries. Such criteria would serve as a better measure of need and would help to address the allocation inequities that currently exist.

Although New York State is currently facing its own significant fiscal challenges, the biggest mistake state leaders could make would be to shift these problems onto the backs of local governments and their taxpayers. New York's municipalities are the building blocks of this state and thereby play a critical role in its overall fiscal stability and strength. As a result, not only do they deserve a guaranteed level of state aid, but it is necessary to ensure the state's continued prosperity, as well as their own. A strong and growing state-local fiscal partnership is essential to preserving economic vitality at all levels of government. NYCOM, therefore, supports the maintenance of AIM funding at current year levels. In the future, when the state's fiscal picture improves, NYCOM supports upholding the commitment to provide all cities, villages and towns with their remaining two years of increases. Beyond that, we support a revenue sharing program that is predictable, based upon a statutorily defined formula that reflects the rising costs of providing essential municipal services.

The 2010-11 Executive Budget would eliminate AIM funding for New York City and reduce AIM payments to other local governments by either 2% or 5% of 2009-10 adopted budget levels based on the municipality's reliance on this revenue source. Specifically, if a municipality's AIM funding accounts for 10% or more of its total revenues, the AIM allocation would be reduced by 2%, and if a municipality's AIM funding accounts for less than 10% of its total revenues, the AIM allocation would be reduced by 5%.



FINANCE

PENSION COST REFORM

Support legislation that would mitigate the impact of rising pension rates. In recent years, the pension cost crisis has revealed the underlying imbalance between the high cost of New York's public pension benefit structure and the limited fiscal capacity of local governments and their taxpayers. The state and its local governments operate under a defined benefit plan, where employees are guaranteed a certain level of benefits financed primarily by state and local employer contributions to the retirement system. Over the years, these benefits have become increasingly more difficult to sustain. In fact, villages and cities (outside NYC) experienced a tenfold increase in pension costs between 2003 and 2005. Additionally, in September 2009, the State Comptroller announced that pension costs would rise sharply in 2011, with average increases of 61% for non-uniformed employees and 21% for uniformed employees. When combined with other mounting fiscal pressures on local governments, this jump in pension costs will undoubtedly lead to property tax increases and cutbacks in essential municipal services.

NYCOM commends our state leaders for establishing a new retirement tier with more affordable retirement benefits for new hires in both the Employees' Retirement System and the Police and Fire Retirement System. This new tier contains many of the elements the Conference of Mayors has been calling for, including: 1) requiring an employee contribution for the duration of their employment; 2) increasing the minimum retirement age at which an individual can begin to draw down even a partial pension benefit; and 3) revising the way the final average salary (FAS) is determined by limiting the amount of overtime that is included. This much-needed

and long overdue pension reform is clearly a significant step toward helping local governments address their rising personnel costs. Unfortunately, it will do little to assist municipalities in the short-term and, as a result, NYCOM will continue to support finding ways to ease the immediate impact of rapidly rising pension contribution rates. To accomplish this, the state must undertake a thorough analysis of the benefits, funding methodology and oversight structures of our public pension system. Additionally, legislation must be enacted to allow local governments to amortize a portion of their pension costs.

The 2010-11 Executive Budget would permit local governments to amortize a portion of pension contribution costs during a six year period, beginning in 2010-11 and ending in 2015-16.

FINANCE

PROHIBITION AGAINST UNFUNDED STATE MANDATES

Support legislation to constitutionally prohibit the enactment of unfunded mandates. On April 27, 2009, Governor David A. Paterson announced the issuance of an Executive Order that would require any legislation or regulation proposed by a state office or agency and containing a mandate, to include: the estimated cost to local governments (which shall be determined based on input obtained from local governments and local government associations); a cost-benefit analysis; and proposed sources of revenue to fund such mandate. This information must be provided to the Secretary to the Governor, the Counsel to the Governor, the Director of State Operations and the Director of the Division of Budget prior to the formalization of any proposal. The Executive Order also instructs state agencies to undertake a review of their current regulations and report on any proposed changes that would mitigate the impact of exiting mandates on local governments.

While this Executive Order is clearly a step in the right direction, it does not apply to proposals put forth by the State Legislature, nor does it prohibit the enactment

of unfunded mandates. Support 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.

The 2010-11 Executive Budget would impose a four-year moratorium on legislatively-enacted unfunded mandates that would require local governments or school districts to undertake new programs, increase the level of services or increase the value of property tax exemptions beyond \$10,000 for an individual municipality, or \$1 million statewide. This initiative would also improve existing fiscal impact requirements used to identify the true cost of proposed legislation on New York’s local governments.

FINANCE

CHIPS FUNDING

Support continued growth in the level of transportation aid to local governments. 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. While the CHIPS program has increased significantly in recent years, locally-owned roads remain in need of substantial near-term improvements. Local governments should receive a significant portion of any bonded or pay-as-you-go transportation funding.

The 2010-11 Executive Budget would maintain CHIPS funding at the 2009-10 level of \$363 million.

FINANCE

GROSS RECEIPTS TAX - INCREASE RATE AND EXPAND SCOPE

Support legislation that would increase the maximum rate and expand the scope of the local gross receipts tax. Under current law, cities and villages are authorized to impose a gross receipts tax (GRT) on the sale of utility services. For most municipalities, the tax is equal to 1% of the gross income of utilities operating within their boundaries. NYCOM supports legislation that would permit municipalities, at local option, to impose this tax at a rate of up to 3%. The cities of Buffalo, Rochester and Yonkers already have this authority and do impose the tax at the higher 3% rate.

Additionally, 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 GRT. NYCOM supports amendments to current state law to ensure that cellular telephone services are subject to the local GRT along with increased state oversight and enforcement of the local GRT to facilitate full compliance among those who pay and consistency among those who collect.

The 2010-11 Executive Budget would permit cities and villages to increase the local GRT rate from 1% to up to 3%.

FINANCE

WICKS LAW REPEAL

Support repeal of the state's multiple bidding law. Dating back to 1912, the Wicks Law has become one of the most onerous mandates facing local governments. In 2008, the State Legislature finally agreed to amend this outdated statute but these reforms, while supported by NYCOM, were only a first step toward making meaningful changes to this mandate. Prior to July 2008, General Municipal Law § 101 required separate plumbing, heating/ventilation/air conditioning and electrical contracts for state and local government construction projects costing more than \$50,000. The thresholds are now \$3 million in New York City, \$1.5 million in Nassau, Suffolk and Westchester counties, and \$500,000 in the rest of the state. Additionally, public works projects for which a municipality opts to require the contractor to use a project labor agreement (PLA) are exempt from the Wicks Law provisions.

Despite these changes – particularly the threshold increases – many municipal projects are still subject to the multiple bidding requirements under the Wicks Law. This requirement has the effect of increasing costs, delaying projects and, in some cases, preventing projects from going forward at all. Previous studies estimate that the Wicks Law adds anywhere from 8% to 30% to project expenses. Furthermore, several of the labor-related provisions that were included in the 2008 reforms have posed some real problems for our upstate municipalities and small businesses.

Support legislation to repeal the Wicks Law. Eliminating this onerous mandate will help stimulate our languishing local economies by allowing municipalities to utilize a more cost-effective approach to executing public projects, thereby removing a major impediment to communities investing in much-needed infrastructure and other capital improvements.

The 2010-11 Executive Budget would exempt only school districts from the multiple bidding requirements imposed by the Wicks Law.



EMPLOYEE RELATIONS AND PUBLIC SAFETY

STAFF CONTACT: JOHN GALLIGAN

EMPLOYEE RELATIONS AND PUBLIC SAFETY

COMPULSORY ARBITRATION

Support legislation to amend the compulsory arbitration law to: 1) define the term “ability to pay” and require that an arbitration panel give the term substantial weight in making an award; and 2) provide for final offer arbitration on either an issue-by-issue basis or for the entire response to issues by each party. Next year, the compulsory arbitration statute, Civil Service Law § 209, will expire. Several municipal officials have identified problems with the compulsory arbitration statute, the last step in resolving an impasse in labor negotiations between a municipality and a police or firefighter union. These problems include:

- **Definition of ability to pay.** The statute has no definition of its phrase “ability to pay.” It should be amended to require that an arbitration panel accord substantial weight to “ability to pay” when making an award and the term should be defined as the ability of a public employer to pay all economic costs to be imposed on it by an arbitration award without requiring an increase in the level of real property taxes for each year or years addressed by the award.
- **Final offer arbitration.** Under the current arbitration process, each party submits their most recent bargaining demands to the arbitration panel and offers evidence in support of the demands presented. The arbitration panel has the authority to make an award as it deems appropriate and is not required to accept either party’s position on a particular matter at impasse. Some states use a different process and require that an arbitration panel pick the final offer of either party. Many practitioners who are familiar with both types of compulsory

arbitration contend that the final offer requirement forces a convergence of bargaining demands as opposed to what is currently used in New York. The compulsory arbitration law should be amended to require that the arbitration panel select the final offer of one of the parties.

EMPLOYEE RELATIONS AND PUBLIC SAFETY

HEIGHTENED RISK FOR DISABILITY PAYMENTS UNDER GENERAL MUNICIPAL LAW § 207-A AND § 207-C

Support legislation to provide that municipal disability benefits for paid firefighters and police officers be limited to injuries incurred when performing hazardous work duties. 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. These sections of the General Municipal Law should be amended to apply a “heightened risk” standard for the granting of these 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 paid firefighter or police officer who might be injured while involved with a nonhazardous work duty would instead file a claim for workers’ compensation benefits.

EMPLOYEE RELATIONS AND PUBLIC SAFETY

PREVAILING WAGE REFORM

Support legislation establishing thresholds for prevailing wage compliance. Labor Law § 230 addresses contracts to provide services to municipally owned buildings and exempts from coverage for the payment of prevailing wages any contract of less than \$1,500. This dollar exemption dates from 1971. Since that time, consumer prices have quadrupled. Labor Law § 220 addresses contracts for public works projects by which all such contracts require the contractor to pay his or her workers prevailing wages and contains no similar dollar exemption. These statutes should be amended to exempt public works contracts of less than \$15,000 from prevailing wage obligations and to exempt building service contracts of less than \$10,000 from the prevailing wage law.

EMPLOYEE RELATIONS AND PUBLIC SAFETY

A DECISION TO TRANSFER THE WORK OF UNIONIZED EMPLOYEES SHOULD BE A NON-MANDATORY SUBJECT OF NEGOTIATION

Support legislation to treat a decision to transfer work performed by unionized employees as 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 been performed exclusively by the unionized workers. To promote the ability of local governments to consolidate functions, 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.



GOVERNMENT OPERATIONS AND COMMUNITY DEVELOPMENT

STAFF CONTACTS: WADE BELTRAMO AND KATIE O'NEILL

GOVERNMENT OPERATIONS AND COMMUNITY DEVELOPMENT

VILLAGE DISSOLUTION PROCESS

Support amendments to the “The New N.Y. Government Reorganization and Citizen Empowerment Act.” On June 24, 2009, Governor Paterson signed into law “The New N.Y. Government Reorganization and Citizen Empowerment Act” (the Act). This new law, which dramatically changes the method of restructuring New York’s local governments, will produce results contrary to its stated goals of increasing efficiency, reducing the number of local governments and lowering property taxes. Consequently, the following amendments should be made to the Act:

1. Raise the signature threshold for initiating the dissolution process to 25% of electors;
2. Clarify the petition signature process, including adding a time period for signing petitions and identifying how the number of signatures is calculated;
3. Require a dissolution study and plan prior to a dissolution vote;
4. Require the dissolution study and plan to be developed by a committee;
5. Lengthen the time frames for conducting the dissolution study and developing the plan;
6. Alter the time for having the vote on a proposed dissolution to be at a time when the village normally has its election;
7. Allow the democratically elected governing board to approve or disapprove the dissolution after receiving the study and plan;

- (a) If the board approves the dissolution study and plan, such approval is subject to a mandatory referendum, and
 - (b) If the board disapproves the dissolution study and plan, such disapproval is subject to a permissive referendum; and
8. Clarify that a village may only be dissolved via a county local law if a majority of the voters in the village vote in favor of the referendum on the county local law.

GOVERNMENT OPERATIONS AND COMMUNITY DEVELOPMENT

INDUSTRIAL DEVELOPMENT AGENCY REFORM

Oppose legislation that would impose prevailing wage and living wage requirements on Industrial Development Agency projects. Industrial Development Agencies (IDAs) are one of the few economic development tools available to local governments. They serve as an important financing mechanism and provide tax benefits to attract and retain businesses and jobs. In addition, IDAs have been essential in providing low-cost financing to many civic facility projects, such as hospitals, group homes and community facilities. However, the authority to finance such projects was allowed to sunset, and now more than \$2 billion in civic facility projects are sitting idle. In addition, recent amendments have been proposed to the IDA law which would impose prevailing wage and living wage requirements on all IDA projects. If enacted, such requirements would cripple the ability of IDAs to undertake projects that would attract or retain businesses. Consequently, any amendments to state law which would impose prevailing wage and living wage requirements on IDA projects should be opposed, and the authority to finance civic facility projects should be restored.

GOVERNMENT OPERATIONS AND COMMUNITY DEVELOPMENT

PROCUREMENT REFORM

Support increased competitive bidding limits for local governments. Currently, General Municipal Law § 103 requires competitive bidding for all purchase contracts over \$10,000 and public works contracts over \$35,000. These thresholds prohibit flexibility and efficiency in government, as municipalities must incur significant time and administrative expenses in order to comply. Support legislation that would raise the competitive bidding thresholds to \$25,000 for purchase contracts and \$50,000 for public works contracts. Raising the thresholds will provide local governments with greater flexibility and ease when entering into contracts for small projects.

The 2010-11 Executive Budget proposes to increase the competitive bidding limits from \$10,000 to \$20,000 for purchase contracts and from \$35,000 to \$50,000 for public works contracts. In addition, the Budget would provide additional procurement flexibility by authorizing local governments to conduct reverse auctions; piggyback off of other state and certain federal contracts; publish bid notifications in the statewide electronic Contract Reporter; require bids to be submitted electronically; and allow contracts to be awarded on the basis of “best value” rather than lowest bid.

GOVERNMENT OPERATIONS AND COMMUNITY DEVELOPMENT

EMPIRE ZONE REFORM

Oppose retroactive application of new standards for Empire Zone eligibility. The Empire Zone program has been a critically important component of numerous local economic development initiatives in every area of the state. The program has provided tax credits to businesses creating jobs in New York. In response to certain incidents of abuse, in May 2009, the state promulgated

emergency regulations while new permanent regulations are being developed. The emergency regulations apply new standards retroactively to businesses that either made the decision to move to or remain in New York because of the benefits under the old standards. NYCOM opposes retroactive application of more stringent benefit-cost standards to previously certified businesses.

The 2010-11 Executive Budget would create a new *Excelsior Jobs Program* which would offer a package of tax incentives to businesses in targeted industries which create and maintain at least 50 net new jobs in New York for five years. The program's cost would be capped at \$250 million annually.



ENVIRONMENT AND ENERGY

RENEWABLE ENERGY AND “GREEN BUILDING” PROGRAM

Support the development of a statewide renewable energy program that encourages local governments to invest in renewable energy technology. Such program shall include:

- **Price Preference for Renewables**
Support legislation that authorizes local governments to purchase a percentage of their energy from renewable sources without running afoul of the state's competitive bidding laws and/or includes a subsidy to close the gap between the price of these commodities and conventional-energy supplies.
- **Price Preference for “Green Building” Technology and Materials**
Support funding that demonstrates a committed state investment in clean and green building technologies and decreased reliance on fossil fuels

and waste-to-energy/incineration that contribute to air pollution. In order for municipalities to follow this same commitment, the cost of technology must be competitive. Support legislation that authorizes local governments to purchase clean and green technology without running afoul of the state's competitive bidding laws and/or includes a subsidy to close the gap between the price of these technologies and conventional building materials.

ENVIRONMENT AND ENERGY

CITIZEN SUIT

Oppose legislation that would confer standing to private citizens to bring suits in response to alleged violations of the environmental quality review provisions of the Environmental Conservation Law. This type of legislation will take control out of the hands of local planning bodies and encourage a litigious atmosphere among the public, developers and local governments. The SEQRA process allows for public participation through a series of hearings and open meetings. Allowing citizens to bring suits related to SEQRA is bad public policy and has the serious potential to stymie job growth and much-needed economic development in New York State.

ENVIRONMENT AND ENERGY

EMERGENCY MANAGEMENT - PREPAREDNESS AND RESPONSE

Support the dedication of state resources for local government training, planning and water system protection. Specifically, support funding:

- To increase the ability of local governments to strategically plan for and respond to emergencies, including training of first responders, public works officials and employees, training for recognizing and dealing with chemical and biological terrorism, and meeting disaster equipment needs;
- For advanced monitoring, detection, and screening technologies for New York's municipal water systems;

- For emergency equipment, including generators and pumps for water and wastewater facilities;
- For immediate water system security assessments and to enhance the security of the state's community water systems (improved perimeter security and access controls); and
- For assistance in developing standardized preparedness planning and response templates to go along with NIMS requirements.

The 2010-11 Executive Budget includes a total of \$833 million in state and federal funding to support Homeland Security and Emergency Preparedness initiatives.

ENVIRONMENT AND ENERGY

AUTHORIZE FINANCING OF STORMWATER MANAGEMENT

Support legislation that authorizes the creation of Stormwater Utility Districts. Stormwater utilities have been used successfully by municipalities in other states to address the administration of the Municipal Stormwater Sewer System (MS4) program. A stormwater utility would operate as a department of municipal government, similar to municipal water or sewer utilities. These utilities are funded by user fees or special assessments as opposed to general tax revenues. This approach is perceived as more equitable by property owners, establishes a more reliable revenue stream, and provides a mechanism to better account for program costs. The stormwater utility concept can also be applied to a county or regional-level authority. In doing so, there can be efficiencies of scale and intermunicipal/drainage basin issues can be more readily addressed.

The 2010-11 Executive Budget would include \$5 million in the Environmental Protection Fund (EPF) for non-agricultural non-point source pollution control.



Tax shifting is the practice of one government shifting its taxes, costs and/or revenue shortfalls onto a lower level of government. Stopping New York State's penchant for tax shifting is the first step in taking control of what many New Yorkers would say is our state's number one problem: the oppressive and regressive real property tax. The New York State Conference of Mayors has developed a Web site – *StopTheTaxShift.org* – to help our state and local officials, the media and the public understand just how state actions – that is, state aid and state mandates – impact New York's real property tax burden.

As *StopTheTaxShift.org* highlights, the state-local relationship in New York has been characterized, historically, by a pattern of the state (1) underfunding aid to municipalities, and (2) using state mandates to dictate inefficient ways in which local governments must deliver services. In recent years, the state has made significant headway in building a tradition of predictable growth in state aid through the Aid and Incentives for Municipalities (AIM) program. This renewed fiscal commitment is producing positive and measurable results. The growth in municipal property taxes has slowed, but this trend will continue only if the state's commitment to this funding stream is maintained.

While New York has begun to make progress in its commitment to municipal aid, efforts to achieve relief from state mandates have been marked by much talk and little action. For every mandate local officials have sought to have repealed, a special interest group that benefits from such mandate has stood in the way of reform and enhanced cost effectiveness at the local government level. Now, more than ever, New York and our property taxpayers cannot afford to pay for the hundreds of millions of dollars in costs caused by state mandates.

StopTheTaxShift.org allows visitors to review a comprehensive listing of nearly fifty state mandates pertaining to workforce costs, local taxation and other non-property tax revenues, government operations and procurement. This Web site describes the real impact mandates have on the capacity of local officials to manage government costs consistent with the desires of their constituents.

We urge all New Yorkers concerned with property taxes to take advantage of the information the Web site contains and the ease with which it can help you better understand what needs to be done to help protect New York's most important special interest – its residents.