



New York State Conference of Mayors and Municipal Officials

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Peter A. Baynes

Assembly Hearing on the Cap on Real Property Taxes

Testimony of the New York State Conference of Mayors

Peter A. Baynes

NYCOM Executive Director

Before the

Joint - Assembly Standing Committee on Ways and Means

Chair: Assembly Member Herman D. Farrell, Jr.

Assembly Standing Committee on Education

Chair: Assembly Member Catherine Nolan

Assembly Standing Committee on Real Property Taxation

Chair: Assembly Member Sandra Galef

Assembly Standing Committee on Local Governments

Chair: Assembly Member William Magnarelli

and Assembly Standing Committee on Cities

Chair: Assembly Member Carl Heastie

March 1, 2011

Albany, New York

I want to begin by thanking the Assembly for holding this hearing on what is certainly one of the most significant issues facing this state, and more importantly, local governments in decades. I am Peter Baynes, Executive Director of the NYS Conference of Mayors, and I appreciate the opportunity to express the views of our 585 member cities and villages.

Every day you hear more and more about New York having the highest tax property tax burden, about residents leaving in droves, about college graduates not being able to afford to stay here, about seniors being taxed out of their homes, about businesses moving to other states – and the list goes on. At the same time, there is a growing sense that a property tax cap may be the singular answer to these problems. And let's face it – capping the amount the property tax can grow from year to year, in theory, seems to make a lot of sense. While it may seem logical on the face of it and provides political appeal in its simplicity, we are certain that a property tax cap without relief from state mandates and specific exclusions (such as costs associated with health insurance, pensions and reductions in state aid) will result in destructive local budget deficits, decimated municipal work forces and a dangerous reduction in the essential services provided by local governments.

The Need for Mandate Relief

By now I hope you have all seen the report and recommendations of NYCOM's Mayoral Task Force on Mandate Relief entitled "You Can't Cap What You Can't Control." In lieu of lengthy testimony, I am going to summarize the main points of that document for I think it comprehensively speaks for itself.

The purpose of this report was to illustrate – with supporting data from the state's cities – why the answer to our property tax problem is not as simple as people may think; that without real, meaningful mandate relief and exclusions for those rising costs that are largely beyond a mayor's control, a property tax cap is doomed to fail and to do much more harm than good.

The report focuses on those mandates related to workforce costs since those expenses encompass the largest part of city and village budgets. The impacts of the Taylor Law, the Triborough Amendment, the statutes governing disability payments for police and firefighters – all of these tie the hands of local officials – and have done so for years. In the face of declining revenues, including state aid, local officials have cut their budgets to the bone, including reductions in the number of municipal employees. Absent reform of these cost drivers, they will be forced to further eliminate jobs and reduce essential services because those are the only options that remain.

The results of a survey conducted by NYCOM and highlighted in the report, show that the projected growth in city pension and health insurance costs in 2011 and 2012 will far exceed the growth in property tax levies allowed under a cap, and that by 2014 city employee benefit costs alone will consume each city's entire property tax levy. In other words, there would be no property tax revenue available for other essential services like public safety, road repair, parks, or water and sewer systems. This is why mandate relief is a critical component of any tax cap scenario.

Our report contains recommendations for both short-term and long-term relief from these two largest cost-drivers. The short-term relief would come from immediately reinstating the 3% employee pension contribution that was eliminated in 2000 for Tier 3 and Tier 4 members of the state Employee Retirement System with 10 years of service. While the often heard response to this proposal is, "You can't do it," NYCOM contends that the law is unclear and the issue has never been litigated in New York. NYCOM believes that the constitutionality question must first be unequivocally answered, and if it is determined that reinstating the 3% is not an option, then we must consider other "more indirect" avenues of achieving some level of employee contribution toward the rising cost of public pensions, such as establishing an employee benefit trust that would be funded jointly by the taxpayers and public employees. It simply makes no sense that for many of those earning a public pension in New York – the benefit is being paid by taxpayers and not the individuals that receive such benefit.

The same argument can be made in the case of health insurance. There are still a considerable number of employees in New York who contribute nothing to the cost of their health insurance. Instead, those costs are funded by the general public through the property tax. Absent a mandatory minimum level of contribution to health insurance, and/or amendments to the binding arbitration statute and repeal of the Triborough amendment, the ability to rein in the costs of health insurance will be virtually impossible. The bottom line is if steps are not taken, or willing to be taken, to provide immediate relief from rising pension and health insurance costs, then the extent to which the growth in those costs exceeds 2% must be excluded from the cap

The Governor's creation of the Mandate Relief Redesign Team – of which I and NYCOM President, Mayor Sam Teresi of Jamestown, are members – has helped to continue the dialogue and debate on these issues. But dialogue and debate are not going to help local officials balance their budgets, provide essential services and preserve jobs. Only significant reforms to the cost drivers that are resulting in higher property taxes can do that. The scope

and significance of the recommendations advanced by the Mandate Relief Redesign Team will be an important bellwether as to the likelihood of success in crafting a property tax solution. The State Legislature must not rush to pass a property tax cap until it is clear that the recommendations of the Redesign Team are going to do what is necessary to make such a cap workable in New York, and are enacted by the Assembly and Senate.

We have shared our report and recommendations of the Mayoral Task Force on Mandate Relief with the Mandate Relief Redesign Team and are hopeful that our proposals will ultimately be both recommended to and accepted by the Governor. In addition to those recommendations previously mentioned relating to pensions and health insurance costs, there are a few others I believe are worth mentioning.

- **Temporary Freeze on Public Sector Wages:** Given the fiscal stress the state and its local governments are currently facing, the State Legislature should declare a state of financial emergency and impose a one-year wage freeze for all state, local government and school district employees. This concept of “suspended animation” would give the state and its local governments greater ability to address the fiscal challenges they are confronting, without having to dramatically reduce their workforce or curtail essential municipal services, until our other cost saving reforms, such as those outlined below, are implemented. Under this proposal, a municipality would have the ability to opt-out of the wage freeze if it demonstrated that it had negotiated an offset of equal or greater value with its unionized and non-unionized workforce (e.g., increased employee contributions for health insurance).
- **Reform Compulsory Arbitration:** In the event an impasse is reached in negotiations with a police or firefighter union, the final step in the impasse resolution process is the use of compulsory arbitration. An arbitration panel has significant power and may issue an award which requires an increase in taxes. However, such panel is not responsible for its award and is not accountable to taxpayers. Over the years that the compulsory arbitration law has been in existence, many bargaining units have sought to rush to arbitration and avoid substantive negotiations. The compulsory arbitration statute imposes an unfunded mandate upon municipalities and therefore should be allowed to sunset in June 2013. However, until then, amendments to the statute must include explicitly defining “ability to pay” to ensure that a public employer does not have to raise taxes or reduce services in order to cover the costs of an arbitration award, and limiting the number of times a police or firefighter union can seek binding

arbitration to ensure that it is not routinely used as a way to avoid good faith negotiations. Finally, the proceedings of an arbitration panel should be subject to the Open Meetings Law by requiring the arbitration panel to deliberate in a public forum and to present its decision at a meeting of the legislative body. This would add a level of accountability to a process that currently lacks any degree of transparency.

- **Repeal the Triborough Amendment:** The 1982 Triborough Amendment to the Taylor Law prohibits a public employer from changing any provision of an expired labor agreement until a new agreement is reached. In the private sector, where collective bargaining has existed for more than 60 years under the National Labor Relations Act, no similar restriction is imposed upon employers who are parties to a labor contract. The Triborough Amendment was approved with the strong support of unions and has the effect of stagnating the bargaining process by discouraging unions from offering concessions or givebacks. NYCOM urges the State Legislature to repeal this amendment.

Other Issues Concerning the Cap

In addition to the fact that many local governments simply cannot survive under a cap that is not accompanied by significant mandate relief, there is another potentially devastating side-effect to this proposal. A property tax cap will very likely restrict and possibly eliminate any new growth and development in our local communities. This is because municipalities will have no ability to fund the costs associated with new infrastructure and enhanced services that are a necessary accompaniment to growth and development, as this would require an increase in the now “capped” levy. So even when growth in the tax base naturally increases your property tax revenue without increasing the property tax rate or an individual taxpayer’s liability, the cap will prevent this growth from occurring. For a property tax cap to be successful, it should allow for increases in the levy that are attributable to increases in the assessed valuation resulting from development.

Another issue with the current tax cap legislation that passed the Senate (S.2706/A.3092) is that, in order to override the cap, it would require a supermajority vote of the municipality’s governing body and then be subject to a mandatory referendum. Although we have been assured by members of the Senate that the mandatory referendum requirement was inadvertent and will be amended, this has not yet occurred. We strongly believe the decision to override the cap, as with any governmental decision, should be made by the body elected to represent its citizens.

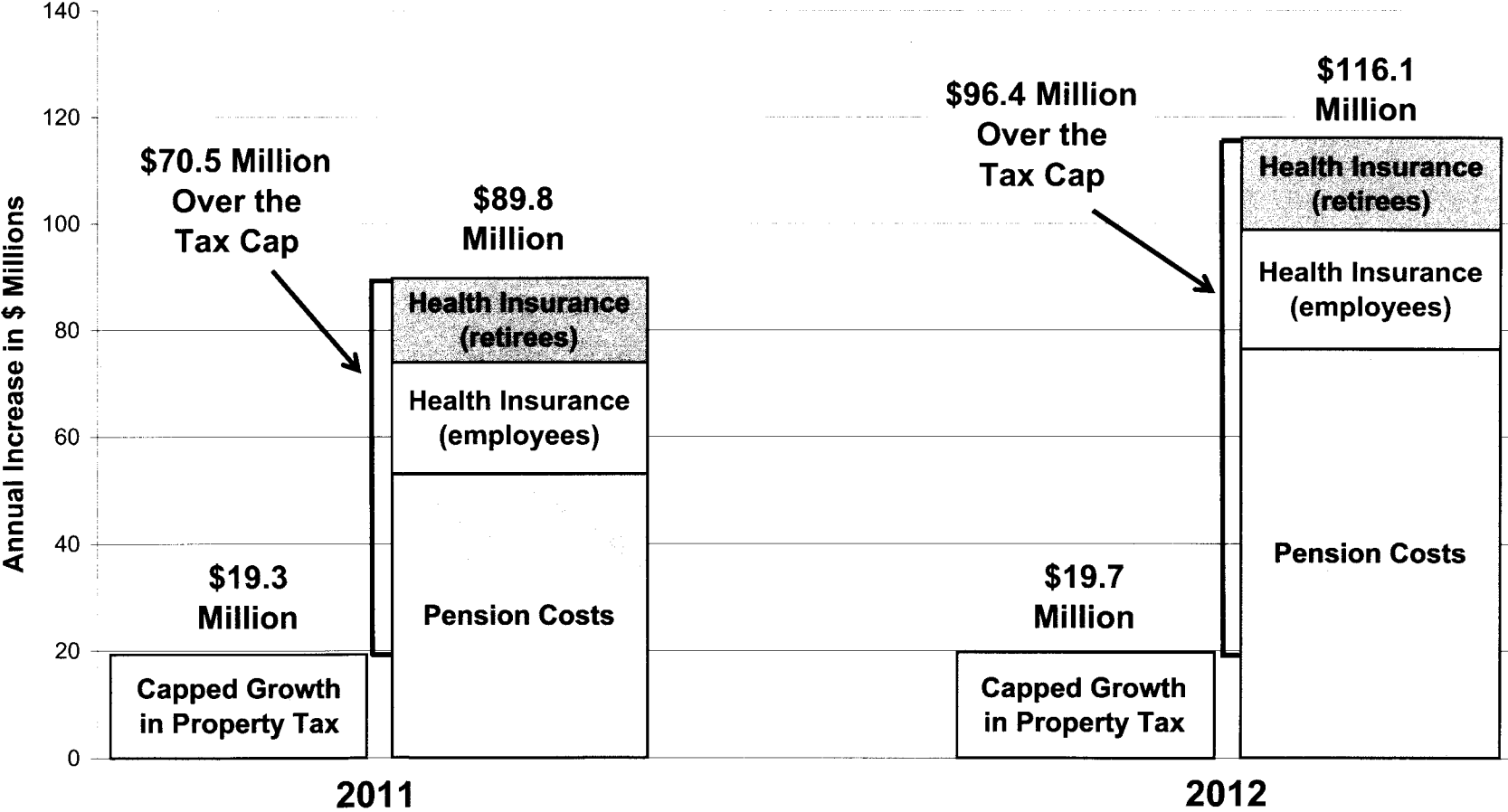
Finally, we have serious concerns relating to the limited exclusions to the cap included in the bill, particularly pertaining to capital expenditures. The bill appears to exclude those capital expenditures “that have been approved by the qualified voters of the local governments.” The vast majority of debt issued by local governments is not voter approved and, therefore, would not meet the criteria for this exclusion. Furthermore, Article VIII of the State Constitution provides that “the Legislature shall not restrict the power to levy taxes on real estate for the payment of interest on or principal of indebtedness theretofore contracted.” Under the terms of this legislation, a large majority of the debt issued by a local government would be subject to the cap. We believe this could be a violation of the Constitution and could also jeopardize local credit ratings and the ability to issue debt by undermining the “full faith and credit” pledge on municipal bonds.

Conclusion

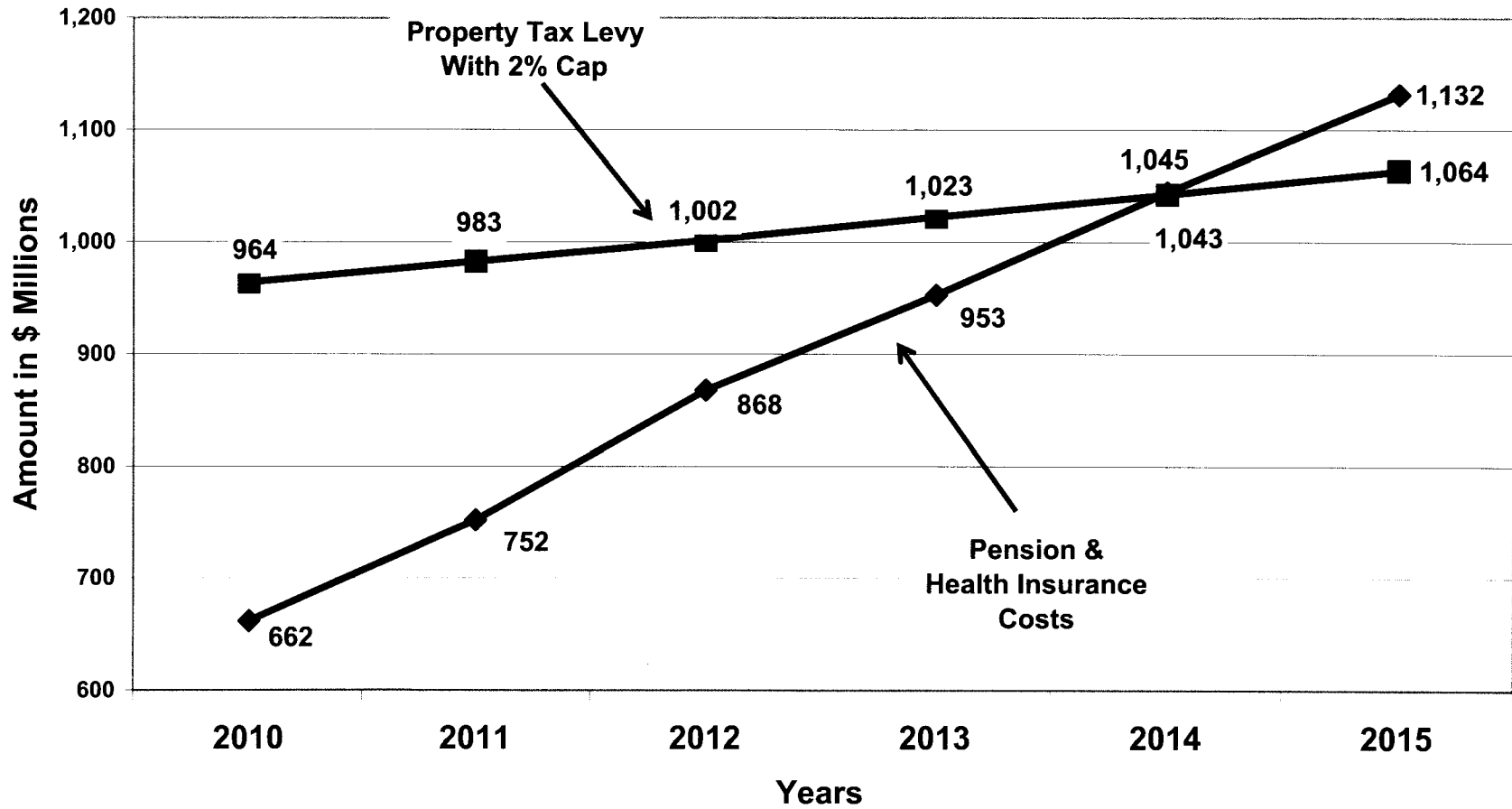
Taxpayers in New York will get the two things they need most – property tax relief and the continuation of essential municipal services – only if Albany finally demonstrates the will to reform the state mandates that are the real culprits in creating New York’s overwhelming property tax burden. NYCOM urges each of you and the entire State Legislature to give local officials the tools to implement real and sustainable property tax relief that maintains essential municipal services and our communities’ quality of life. A property tax cap without significant mandate relief and exclusions for the expenses beyond the control of local officials will certainly fail to achieve these goals.

Again, I thank you for the opportunity to testify at this important hearing. NYCOM looks forward to providing your committees with additional input as deliberations over the tax cap continue.

Annual Growth in City Employee Benefits Far Exceeds 2% Cap on Property Taxes



City Employee Benefit Costs Alone Would Exceed Capped Property Taxes



The "Hammer" Approach Will Devastate Cities

Capped Growth in Property Taxes vs. Mandated Growth in Pension Costs

City	Population	Capped Increase in Property Tax Levy 2012	Estimated Pension Increase 2012	% by which Pension Increase Exceeds Tax Increase	Reduction in City Workforce 2000 to 2011
Canandaigua	11,264	\$83,578	\$212,089	154%	18%
Corning	10,842	\$106,081	\$249,937	136%	21%
Elmira	30,940	\$208,851	\$822,619	294%	16%
Lackawanna	19,064	\$177,774	\$425,725	139%	16%
North Tonawanda	33,262	\$313,626	\$911,632	191%	22%
Ogdensburg	12,364	\$87,446	\$129,135	48%	8%
Oswego	18,096	\$136,474	\$318,703	134%	26%
Plattsburgh	18,816	\$181,623	\$814,777	349%	15%
Rome	34,950	\$293,392	\$961,501	228%	15%
Syracuse	147,306	\$664,242	\$5,903,687	789%	6%
Watertown	26,705	\$149,748	\$887,349	493%	3%

Source: Preliminary data from NYCOM city budget survey.