Summary of Adopted 2020-21 State Budget

The State Legislature agreed to the passing of a $178 billion 2020-21 State Budget. Given the current circumstances and the significant downturn in the economy, we believe this budget could have been much worse for cities and villages. However, it is important to acknowledge that mid-year adjustments to the State’s financial plan are a very real possibility and we will need to work together to ensure that the State’s problems are not pushed down to local governments and that the next Federal stimulus package includes direct assistance to all municipalities, regardless of their population.

AIM Funding – The Budget makes no changes to the amount of AIM funding for cities, villages and towns and the associated AIM-related payments that certain villages and towns receive from county sales tax revenue.

Transportation Funding – CHIPS is funded at the current $438 million and the Budget includes the full restoration of $65 million in Extreme Winter Recovery funding. The Budget also includes $100 million each for PAVE-NY and BRIDGE-NY. In addition, the Budget increases the CHIPS bidding-out threshold from $250,000 to $350,000, allowing municipalities the option to perform any projects at or under the $350,000 threshold with their own workforce rather than bidding out the contract competitively. Finally, the Budget includes $236 million in operating support for upstate transit systems.

Water and Sewer Infrastructure Funding – The Budget includes an additional $500 million for drinking water and wastewater infrastructure funding, similar to what was proposed in the Executive Budget.

Authorization for Mid-Year State Budget Reductions – The Budget includes language that would permit the State Budget Director to make uniform or targeted reductions to appropriations if the State Budget becomes unbalanced because revenues fall below projections or expenditures rise above projections during three different periods (April 1-30, May 1-June 30, July 1-December 31) of the state fiscal year. Any proposed reductions would be shared with the Legislature and they will have ten days to prepare and adopt their own plan by concurrent resolution. If the Legislature does not do so, the Budget Director’s proposed reductions would go into effect automatically.

Amendments to Discovery Reform – The State Budget includes several amendments to the discovery reforms that NYCOM was seeking. Specifically, the Budget repeals the requirement that the prosecutor provide initial discovery within 15 calendar days of the defendant being arraigned and adds new provisions requiring that,

1. If a defendant is in custody, the prosecutor must provide initial discovery within 20 calendar days of the defendant being arraigned;
2. If a defendant is not in custody, initial discovery must be provided within 35 calendar days of arraignment;
3. If the charge is either (a) a traffic infraction under the NYS Vehicle and Traffic Law brought by simplified information, or (b) a city, village, town, or county defined petty offense that does not carry a statutorily authorized sentence of imprisonment, discovery must be performed as soon as practicable, but not later than fifteen days before the trial.

The amendment also adds body camera evidence to the voluminous discovery time limitations which stays discovery for up to an additional 30 days. Defendants may still file a motion for disclosure of such items and information under Criminal Procedure Law § 245.20(1) at an earlier date, however.

The amendment also puts in place additional protections against disclosure of witness and victim information, including 911 caller information. Specifically, prosecutors may withhold such information without having to obtain a court order. However, defendants may move the court for disclosure.

Note that local infractions which are defined as misdemeanors and violations of the State’s Uniform Fire Prevention and Building Code are still going to be subject to the 35 calendar day automatic initial discovery requirement.

**Discovery Reform Implementation Aid** – The Budget includes $40 million, which would be transferred from the Office of the Manhattan District Attorney, to support local services and expenses related to discovery reform implementation, including but not limited to, digital evidence transmission technology, administrative support, computers, hardware and operating software, data connectivity, development of training materials, staff training, overtime costs, litigation readiness, and pretrial services. Eligible entities include, but are not limited to counties, cities with populations less than one million, and law enforcement and prosecutorial entities within towns and villages.

**Bail Reform** – The Budget restores to the courts some of the discretion that was lost as part of last year’s bail reform measures. Specifically, the number of qualifying criminal offenses has been expanded that will grant judges the authority to consider setting a monetary bail amount when analyzing a defendants likelihood of returning to court for future court appearances. The Budget also expands the types of non-monetary conditions a court can impose on a defendant during the pendency of their case. In addition, the Budget amends the time-frame in which a defendant must appear in court for their arraignment. The return date on the appearance ticket in most instances will still be within twenty days. However, in the event a local criminal court will not be in session within twenty days, the language allows for the return date to be set for the next scheduled session of the appropriate criminal court if that date is scheduled to occur more than twenty days from the date of the issuance of the appearance ticket.

**Expansion of Prevailing Wage** – Effective January 1, 2022, the State Budget imposes prevailing wage requirements on certain construction projects performed under private contract that receive public funds. Specifically, "covered projects" are defined as construction work done under contract which is "paid for in whole or in part out of public funds" where the amount of all such public funds, when aggregated, is at least 30% of the total construction project costs and where such project costs are over $5,000,000. "Paid for in whole or in part out of public funds" is defined as:

1. The payment of money by a public entity, or a third party acting on behalf of and for the benefit of a public entity, directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment; or
2. The savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions or tax increment financing; savings from payments in lieu of taxes; and any other savings from reduced, waived, or forgiven costs that would have otherwise been at a higher or market rate but for the involvement of the public entity; or
3. Money loaned by the public entity that is to be repaid on a contingent basis; or
4. Credits that are applied by the public entity against repayment of obligations to the public entity.

Certain types of projects, including those related to affordable housing, historic preservation and renewable energy, would be exempt. The language would also allow the Department of Labor to issue stop-work orders when it finds cause to believe that there are violations of the prevailing wage law requirements. Finally, the language also creates a Public Subsidy Board consisting of 13 members appointed by the Governor representing the State Legislature, State agencies, the construction industry, and statewide labor associations. The Subsidy Board will be empowered to examine and make recommendations regarding (a) the minimum threshold percentage of public funds; (b) the minimum dollar threshold of projects; (c) construction work excluded as a covered project; (d) the definition of construction; or (e) particular instances of benefits, monies or credits as to whether or not they should constitute public funds. The Board may also issue binding determinations to any public entity, or any private or not-for-profit owner or developer on any matter related to an existing or potential covered project. Such determinations must be based on documents and/or testimony and will be subject to review via Article 78 of the NYS Civil Practice Law and Rules.

Sales Tax Intercept for Distressed Hospitals and Nursing Homes – The State Budget includes language that will require the intercept of $200 million in sales tax revenue from New York City and $50 million from all other counties sales tax (based upon each county’s percentage share of total net sales tax collections outside New York City) to help fund distressed hospitals and nursing homes. The $50 million intercept for 2020 will take place on January 15, 2021, and then $12.5 million will be withheld each quarter thereafter until March 31, 2022. At this time, it is unclear to what extent this will impact county sales tax sharing agreements.

E-Scooters and E-Bicycles – The Budget legalizes the operation of e-bikes and e-scooters for individuals 16 years of age and older. These devices would only be permitted on roads with speed limits of 30 mph or less and bike lanes. E-bikes would be limited to a maximum speed of 20 mph and e-scooters would be limited to 15 mph. Cities, villages and towns would have the ability to further regulate the time, place and manner of the operation of e-bikes and e-scooters, including but not limited to maximum speed, the use of protective headgear and the wearing of reflective clothing. However, in the counties of Nassau and Suffolk, cities, villages and towns would have to receive their respective county’s approval (via local law) for such further regulation. This would also apply to villages and towns (but not cities) in Westchester County. It should be noted that every city, village and town, regardless of the county in which they are located, would have unilateral authority to prohibit the use of these devices in specified areas or entirely, without the approval of another governing body. It should also be noted that the language gives municipalities the flexibility to allow for the operation and parking of e-bikes and/or e-scooters on sidewalks.
**Renewable Energy Projects Siting** – The State Budget establishes a new Office of Renewable Energy Siting to review siting applications for those renewable energy facilities whose capacities exceed 25 megawatts, and those between 20-25 megawatts who opt into the new process. Much like in the proposed Executive Budget, the procedures adopted by the State Legislature will “fast track” the siting process and will shift the burden to municipalities to prove that the siting application is inconsistent with local laws and regulations. However, unlike the proposed version, the enacted language predicates approval of an application upon proof that the applicant consulted with the host municipality prior to making the application. Additionally, the language requires host community benefit agreements, establishes a local agency account or intervenor fund that municipalities may use to determine whether a proposed facility complies with local laws and regulations, and requires adjudicatory hearings if a municipality or public comment raises a substantive or significant issue, as will be defined by the regulations implementing the law. Notably, the proposed provisions that would have altered the valuation methodology for property taxation and limited the ability of local governments to negotiate PILOTs have been removed.

While the legislation provides for more local government engagement in the process than initially proposed, it will still replace the Siting Board and the Article 10 siting review process for renewable energy facilities exceeding 25 megawatts in capacity and will deem a renewable energy project granted if not acted on within one year of a completed application. Additionally, the statute permits the Office of Renewable Energy Siting to disregard local laws and regulations when approving siting applications if such local laws diminish the environmental benefits of the proposed facility, based on the carbon reduction targets articulated in the Climate Leadership and Community Protection Act. Lastly, the legislation authorizes the New York State Energy Research and Development Authority (NYSERDA) to establish a program that encourages and incentives the development of clean energy resources.

**Downtown Revitalization Initiative** – The State Budget includes funding for a fifth Downtown Revitalization competition where 10 communities will each receive $10 million.

**Regional Economic Development Councils (REDC)** – The State Budget continues the regional economic development approach and provide $220 million to support a tenth round of the REDC awards. This will include core funding of $150 million and $70 million in tax credits. This will be combined with a wide range of existing agency programs to provide a total of $750 million for this purpose.

**Environmental Protection Fund (EPF)** – The EPF continues to be funded at $300 million, including $39 million for solid waste programs, $89 million for parks and recreation, $153 million for open space programs and $19 million for climate change.

**Mother Nature Bond Act** – The State Budget includes language that establishes a $3 billion Mother Nature Bond Act, which would require approval via a statewide referendum in November 2020. The $3 billion in bond proceeds would be used to preserve and restore the State’s natural resources and reduce the impact of climate change by funding projects to restore natural habitats, protect open spaces, reduce flood risks, and improve water quality. The Department of Environmental Conservation would be responsible for administering the funds and municipalities would have the ability to apply for and receive monies to perform acts necessary to carry out a project or obligation related to the Mother Nature Act. The $3 billion includes $700 million for project design and engineering, $200 million for water infrastructure improvement projects, and $100 million for municipal stormwater grants.
Ban on Styrofoam – Effective January 1, 2022, the State Budget imposes a ban on the sale, use, and distribution of food service containers and loose fill packaging that contain expanded polystyrene foam, commonly referred to as Styrofoam packaging and packing peanuts. Unlike what was proposed in the Governor’s Executive Budget, this ban will supersede and preempt all local laws and regulations relating to the sale and distribution of such products. Counties, however, are authorized to exceed the thresholds by local law when the county files a written declaration of intent to administer and enforce such a local law with the Department of Environmental Conservation.

Reimagining the Erie Canal – Building on the findings of the Reimagine the Canal Task Force, the New York Power Authority, which now oversees the Canal Corporation as a subsidiary, will invest $300 million over the next five years to integrate the Empire State Trail and Erie Canal through a new program that is intended to stimulate tourism and economic development, address environmental challenges, and improve the quality of life in communities along the Canal. The first phase of funding will start this year and have two parts: a $100 million economic development fund to invest in communities along the Canal and a separate $65 million investment in solutions that will help prevent ice jams and related flooding in the Schenectady area. The remaining $135 million will subsequently be allocated to research recommendations by the Reimagine Task Force, as well as to initiatives related to flood mitigation, invasive species prevention and ecosystem restoration.

Manual Election Recounts – The State Budget amends the Election Law requiring county boards of elections to conduct manual recounts of ballots from any general, special or primary election, including village elections, in the following circumstances: (1) where the margin of victory is 20 votes or less; (2) where the margin of victory is 0.5 percent or less; or (3) in a contest where one million or more ballots are cast and the margin of victory is less than 5,000 votes. The result of the manual recount will supersede the returns filed by the election inspectors where the canvass was initially conducted.

Leave Time for Voting – The State Budget reduces the amount of paid time off that an employer must provide to their employees to vote on Election Day. Currently, employers are required to give their employees up to 3 hours of paid time off either at the beginning or end of the employee’s shift to vote. The State Budget reduces the paid time off from 3 hours to 2 hours. If an employee has 4 consecutive hours either between the opening of the polls and the beginning of their working shift, or between the end of their working shift and the closing of the polls, they shall be deemed to have sufficient time outside of working hours to vote. If an employee has less than 4 consecutive hours, they may take off so much working time as necessary to vote, but not more than 2 hours of which shall be paid. Lastly, employees would be required to provide notice at least 2 days, but not more than 10 days, prior to Election Day of their intention to take time off.

Denial of STAR Credits for Delinquent Property Taxpayers – The State Budget provides that no basic STAR credit or basic STAR exemption would be granted to property owners with delinquent property taxes for a period exceeding one year. This essentially would enable the State to assist with the enforcement of local past-due property taxes, but would also impose reporting requirements on all local tax districts.