



Independent Democratic Conference

Recommendations on Streamlining Healthcare Costs
and Identifying Cost Saving Measures at the
Municipal Level in New York State

Introduction

Typically, when discussing the concept of a property tax cap in the State of New York, the first response by many is that a property tax cap will not work unless there is immediate relief from mandates passed down by the State Government which burdens the local municipalities as well as the local school districts. The Independent Democratic Conference (IDC) has made part of their ten point policy platform their support for the introduction and passage of a 2% property tax cap. However, realizing that the costs of running local governments and school districts have been driven upward by mandates, some of which have become outdated or are unfairly shouldered by the municipality, the IDC also has pledged to support real and immediate mandate relief for local school districts and municipalities. State government must also do all that it can to help school districts and local governments control their costs by eliminating non-essential state mandates and encouraging a more streamlined government through regionalization, shared services and functional consolidations.

On January 5, 2011, Governor Andrew Cuomo announced the signing of an Executive Order to create a team of private and public sector individuals charged with finding ways to cut the unfunded and underfunded mandates. The Mandate Relief Redesign Team will review unfunded and underfunded mandates imposed by the New York State government on school districts, local governments, and other local taxing districts. The Mandate Relief Team – which will include representatives from private industry, education, labor, and government – will look for ways to reduce the costs of mandated programs, identify mandates that are ineffective and outdated, and determine how school districts and local governments can have greater ability to control expenses. It began its work on Friday, January 7, and is expected to issue its first report by March 1st this year.¹

While the Mandate Relief Redesign Team will be forced to tackle issues such as healthcare and pension costs that have led some to feel caused property tax levies in New York to grow by 73% from 1998 to 2008 and have left Westchester, Nassau and Rockland County respectively the first, second and fifth highest taxed counties in the nation², state mandates cover a variety of areas and services that must be investigated in order to make sure that goods and services are being provided by a local government or school district in the most cost effective way and that there are no unnecessary encumbrances from the state. Normally, state mandates are thought of as regulatory provisions that require a local government to deliver a service without providing the funding to go along with it. However, mandates can also come in the form of restrictions or imposition of requirements on the way municipalities operate or how a particular service is delivered.³

While the task at hand in exploring how to shift the burden of municipal and school mandates from the locality back to the state or to eliminate the mandate completely is a daunting

¹ Governor Andrew M. Cuomo, “Governor Cuomo Creates Commission to Cut Government Agencies and Authorities by 20 Percent,” Press Release, January 5, 2011, retrieved January 7, 2011, from Governor’s website: <http://www.governor.ny.gov/press/01052011createscommission>.

² Governor Andrew Cuomo, “The New NY Agenda: A Plan for Action”, pg 35

³ New York Council of Mayors and Municipal Officials, Stop the Tax Shift, January 14, 2011, <http://www.stopthetaxshift.org/>

task, it is incumbent upon the legislature to explore every avenue to uncover cost effective and cost saving measures for a municipality that are prevented by state mandates. The following report will highlight ways the IDC has began the conversation of bringing real and immediate relief to municipalities while continuing the discussion of larger efforts that need to be made in order for real relief to be forthcoming.

I. Shared Services and Consolidation of Healthcare Initiatives

When looking at reducing the burden on localities one must consider cost effective measures realized through the encouragement of shared services and consolidation. Given the fact that New York has 3,175 local governments, including counties, cities, towns and villages, school districts and fire districts, shared services present a viable option for reducing costs or slowing growth in spending without necessarily impacting service quality.⁴ Healthcare costs are one area where while there is an effort that has already begun to be explored as evidenced by the 10 Municipal Cooperative Health Benefit Plans (MCHBPs) currently active across New York. However all of the MCHBPs were established between the years 1979-1986 and to date there have been no new Municipal Cooperative Health benefit plans established since 1986.⁵ This is an area that the IDC has begun exploring and is committed to addressing in the coming year.

Promoting Inter-Municipal Cooperative Agreement to Reduce Personnel Expenses

The IDC supports legislation to enhance the ability of municipalities to cooperatively provide and manage employee benefits in a manner that reduces the cost of providing such benefits, but which gives such municipal employees more choices in the benefits provided. Further, by cooperatively administering the provision of such employee benefits, perhaps some of the functions of participating municipalities can be consolidated to further reduce overhead costs.

Facilitating the ability of municipalities to combine forces to cooperatively (and voluntarily) administer some or all of the tasks that are now conducted by each municipal personnel officer for their municipal employees should help to reduce overhead costs that are now incurred to administer municipal employee benefits. Those benefits could include: a) the establishment of a less expensive and more centralized payroll, time & attendance, and administration of other personnel services, b) higher participation rates in employee health benefit programs such as New York State Health Insurance Program (NYSHIP) which gives municipal employees more choice in the health care plans that they may participate in, and c) an easy one stop shopping place for municipal employees to obtain information on how best to access their health care benefits.

The proposed legislation will revise the law to further encourage the creation of more centralized cooperatively operated inter-municipal personnel offices or officers that can offer their municipal employees more choices in the health benefits packages offered. Such options can be either offered through the NYSHIP Program (which independently offers its participants

⁴ Office of State Comptroller, Division of Local Government and School Accountability, Research Brief: Shared Services Among New York's Local Governments Best Practices and Tips for Success, November 2009.

⁵ NYS Commission on Local Government Efficiency and Competitiveness, "Cooperative Health Insurance Purchasing", January 14, 2011, <http://www.nyslocalgov.org>.

the option of subscribing to over 10 health insurance plans) or a program independently crafted by the inter-municipal cooperative consortium to offer its employees and select group of health insurance plans.

With the pooling of the number of municipal employees serviced by consolidated or coordinated municipal personnel offices, municipal employees may also be able to access tax deferred programs to enhance their options to establish tax deferred retirement benefit plans, health flex plans, and tax deferred child care expenses. These are relatively sophisticated tax deferred programs that need over 100 participating employees to subscribe to make it cost effective for small municipalities to offer such programs to their employees.

This proposed legislation will also permit inter-municipal employee benefit managers to subscribe to lower cost health insurance products such as Healthy NY. Healthy NY is a comprehensive health insurance product that must be offered by all HMOs in New York to certain qualified (low income) sole-proprietors and other small businesses. These products can be up to 7% less expensive when compared to other HMO products offered. While allowing municipalities to offer the Healthy NY insurance product, the state subsidized stop-loss subsidy would not be provided, which was established to encourage certain qualified low income sole proprietors and small businesses to offer health insurance to their employees.

Furthermore, the insurance law will also be amended to remove impediments that may exist to encourage more municipalities to establish or expand already existing municipal cooperative health plans. These cooperative health plans are self-insured plans that pool the experience of those municipal employees that are within the cooperative plan (experience rated based on the subscribers in the pool and not community rated). While these cooperative plans have been utilized by larger more populous counties (that tend to have more municipal employees), the law should be revised to facilitate the ability of small municipalities to band together to establish such self-insured plans. The benefit to these self-insured plans is that the municipalities involved will have more latitude in developing their own health care benefit packages that provide those benefits that are most in demand by their employees and more importantly result in lower rates.

Exploring Increased Participation into the NYSHIP Prescription Drug Plan

Legislation is also currently being explored by the IDC to allow local governments, many who don't participate in NYSHIP to buy-in to the drug plan without having to buy into the whole medical/hospital NYSHIP plan. This legislation would also permit the establishment of State administered prescription drug carve out plans for retired public employees.

Currently, NYSHIP offers its participating employers a prescription drug benefit that provides coverage for drugs dispensed through retail pharmacies and via mail order. Employers who do not participate in NYSHIP are currently not allowed to participate in the Empire Plan's drug benefit. The IDC recommends that non-NYSHIP employers be allowed to opt into a stand-alone prescription drug plan utilizing the Empire Plan's contracts and structure.⁶

⁶ Final report of the Task Force on Public Employee Retirement Health Care Benefits, established by Executive Order No. 15, June 23rd, 2010

II. Legislative Solutions for Mandate Relief

As touched upon earlier, not all mandates fall into the easily identifiable form of a requirement set on a locality that does not come with corresponding funding. As the New York State Conference of Mayors and Municipal Officials have pointed out, mandates can also be identified as requirements or limitations that hinder a locality or a school district to be as cost effective as needed and prevent the effective use of resources that normally would be at their disposal. While not a definitive list of recommendations and legislative priorities but ones that can be remedied and certainly addressed by the State Legislature, the IDC has identified areas that can be addressed in this legislative session and should be considered by the Mandate Relief Redesign Team as they begin to assess and make recommendation to Governor Cuomo and the Legislative Chamber on February 1st, 2011.

Enforcement of Unpaid Building Code Fines

While much of the blight that we see with regards to abandoned buildings and eyesores in our communities are a direct result of the foreclosure crisis that New York State has been besieged by since 2006, more often than not the source of unpaid building code violation fines and environmental fines that burden the books of towns and municipalities stem from buildings or properties owned by corporate entities who accrue fines with no intention of paying. Unfortunately, as these fines build up, the property continues to fall into disrepair. It is not until the property becomes a danger to public safety or a nuisance that the municipality will expend resources to make the building safe. However, the property remains an eyesore, constantly in non-compliance with local building regulations and the municipality has no ability to recoup the thousands of dollars of fines that have been sitting on their books uncollected. These are fines which at times can equal up to over \$100,000 of lost revenue per building for the municipality. This inequity results in the everyday taxpayer being forced to comply with laws that corporations, LLCs or scofflaws generally do not comply with and the end product is a community being left with eyesores and vacant lots which in turn inevitability drive down the property value of their homes.

While, there are provisions in state law which allow local governments to recover expenses if they expend resources on a property to allay a nuisance condition or if they incur costs associated with the abatement of unsafe and unhealthful conditions⁷, there is no established procedure that would easily allow unpaid fines relating to delinquent property owners to be levied on the property's tax bill. In 1982 the Office of the State Comptroller (OSC) handed down an opinion on this very issue. While recognizing that the Municipal Home Rule Law grants broad powers to local governments to adopt local laws relating to its property, the OSC determined that "there is no State statute which specifically authorizes the conversion of unpaid fines for building code violations to liens on real property and the inclusion thereof on the annual tax bills."⁸

⁷ N.Y. Pub. Health Law §1300

⁸ Office of the State Comptroller of New York Opinion No. 82-72 1982 N.Y. Comp. 88, February 24, 1982.

Furthermore it was concluded that the Municipal Home Rule Law did not provide the authority to convert fines into liens thus leaving the duty up to the State if it so chose.

To address this inequity and to assist in localities being able to collect monies owed to them that can offset expenses for services, the IDC proposes legislation that will allow a local municipality, village or town to adopt and enact a local law providing for the recovery of unpaid building code, property maintenance and nuisance fines in accordance herewith. The expense of a building code fine, property maintenance fine or nuisance fine shall be paid by the owner or occupant of the premises, or by the person who caused or maintained such violation or nuisance and the local municipality, village or town wherein the premises are located may maintain an action in the name of the local municipality, village or town to recover the expense of such fine. The fine when recovered shall be paid to the treasurer or department of finance of the local municipality, village or town to be held and used as the funds of such government entity.

In the event that a building code fine, property maintenance fine or nuisance fine remains unpaid for a period of one year or more from the date of adjudication, the local municipality, village or town is hereby authorized to cause the expense of the fine to be charged against the land on which the building or structure exists or did exist, as a municipal lien, and further cause the expense of the fine to be added to the tax roll as an assessment and to be levied as a special tax against the land upon which the building or structure stands or did stand. Furthermore, if execution upon a judgment for the recovery of the expense of an unpaid building code, property maintenance and/or nuisance fine is returned wholly or in part unsatisfied, such judgment, if docketed in the place and manner required by law to make a judgment of a court of record a lien upon real property, shall be a lien against the land upon which the building or structure stands or did stand.

To reiterate, a mandate by the state on a municipality does not necessarily have to come in the form of a duty imposed by the State Government on the local government with the appropriate funding (or lack thereof) to implement such a mandated program. Mandates on local governments also come in the form of restrictions in state laws that allow a municipality to run a more cost effective government and provide services on its own. As highlighted above in the previous two instances, small changes in the state law can lead to the stimulation of private investment, enhanced tax bases and the increase in governmental revenues.

III. Recommendations to the Mandate Relief Design Team

The New York State Conference of Mayors and Municipal Officials recently created a single-issue website, www.StopTheTaxShift.org, to highlight tax shifts from the state to the locality that have increased the cost of running local governments and resulted in a diversion of resources from services that need to be delivered effectively to services that have become a drain on the coffers of the locality. By examining these small areas, the town, village or municipality

will be able to free up revenue and labor that could otherwise be better utilized to effectively provide local government for all taxpayers. Below are just a few examples of proposals which the IDC is exploring at the recommendation of NYCOMM in order to achieve some of these cost saving measures.

Local Records Management

Local municipalities are required by state law to retain and manage an immeasurable number of various documents, which requires a significant expenditure of time and money by the municipalities. In 1989, the Local Government Management Improvement Fund was created to assist the municipalities in complying with the mandate and to improve local government records management. The money is collected by County Clerks on every deed and mortgage filed in their offices by local citizens, which is then distributed back to local governments through a competitive grants program. In March 2008, a portion of the money collected by county clerks was swept into the state's general fund. Using these funds for state general fund relief means less grants and local governments will have to expend more of their resources to cover the cost of this mandate.⁹

The IDC supports the recommendation by NYCOMM that this fund no longer be an option to be swept in order to fill the coffers of the state's general fund. First and foremost, the recording and collection of such documents comes at a very high expense. The corresponding benefit is access to local records by the local taxpayer. However, these taxpayers pay a corresponding tax for the upkeep and continued maintenance and recording of such public records. By sweeping the fund that taxpayers are paying into not only are we putting a strain on the ability of the municipality to comply with the mandate but we are misappropriating the taxes paid by New Yorkers for the access to these documents and using it contrary to the purpose the fees were paid for. The funding is generated by the locality and paid by the local taxpayer to support the requirement and therefore should be limited for the express purpose of supporting the management of local records.

Lack of Reimbursement of Municipal Legal Costs

A plaintiff can sue any municipality so long as the statutory notice requirements are complied with. Oftentimes plaintiffs rush to comply with the notice requirements and, in so doing, commence litigation against the wrong municipality. Despite this wrongful commencement, municipalities are still obligated to expend money and resources defending the lawsuit. While the desire of the IDC wouldn't be to penalize plaintiffs who inadvertently sue the wrong municipal entity because the boundaries can be difficult for a layperson to ascertain, it is the recommendation that the State should explore options that make it easier for municipalities to extricate themselves from these proceedings and allow courts the option of awarding fees where the wrongful commencement has been willful.¹⁰

⁹ New York Council of Mayors and Municipal Officials, Stop the Tax Shift, January 14, 2011, <http://www.stopthetaxshift.org/>

¹⁰ New York Council of Mayors and Municipal Officials, Stop the Tax Shift, January 14, 2011, <http://www.stopthetaxshift.org/>

Conclusion

This issue of mandate relief is and should be a topic of conversation as we move forward in this legislative session and begin to discuss the tough choices and cuts that every New Yorker faces as we prepare to address closing the 9 billion dollar budget deficit. Not every concern regarding municipal mandates or suggested proposal has a simple and clear cut solution. We are confident that the Governor's Mandate Relief Team will be engaged in discussions that revolve around the larger decisions that local governments are calling on the State to make with regards to mandate relief. However, there are things we can do now, legislation that will start to lift restrictions on localities that will allow them the greater ability to enhance their tax base, legislative solutions that will allow local governments to have options when it comes to providing services but at a more reasonable cost , and considerations to allow municipalities and local governments to operate in a more streamlined and cost effective manner.