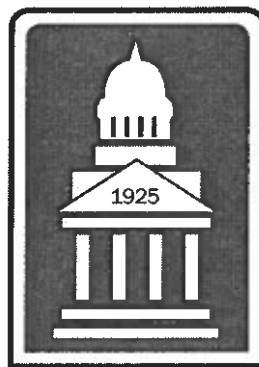


**2012-13 State Budget:  
A Vehicle for Mandate Relief**

*Executive Budget Proposal Provides Foundation  
for Action on Mandate Relief*

*Testimony  
submitted by  
the*

**New York State Association of Counties  
*and the*  
New York State County Executives  
Association**



Tuesday January 24, 2012

Hon. Mary Pat Hancock, NYSAC President  
Hon. Greg Edwards, County Executives Association President  
Stephen J. Acquario, Executive Director

## **Introductions**

Thank you for convening today's hearing on how the Governor's Budget Recommendation will impact local governments. Chairman DeFrancisco, Chairman Farrell, and esteemed members of the Senate Finance and Assembly Ways and Means committees: your commitment to ensuring our State-local partnership remains strong, efficient and effective is critical for all New Yorkers. This is especially true for the unique relationship counties have with the State. Counties administer and finance, at the direction of the State, numerous federal and state health, human services, public safety and consumer protection programs.

It is from this unique relationship and perspective that counties would like to provide testimony today. My verbal remarks are an abbreviated presentation of our written testimony which is more comprehensive and I encourage the Chairs and all Members of the Committees and staff to review the full testimony and contact us with any questions you may have regarding anything we may not cover at this hearing.

First and foremost, the Governor's budget proposes significant and important mandate relief for counties. Without question, this is a step in the right direction toward mandate relief.

We are here today to say thank you, in advance, for enacting these mandate relief proposals in the final 2012-13 State Budget. And we encourage you to continue to advocate for further mandate relief this year through the Mandate Relief Council, so that the integrity of the property tax cap can be achieved.

## **The State of the Counties – The Impact of State Mandates**

Counties have stated for years that mandates from the State are responsible for consuming an increasing proportion of county budgets and are a major contributor to increases in county property taxes. Our central focus today is to explain why it is so critical to support, and then build upon, the mandate relief proposals the Governor has included in his Budget. NYSAC believes the Governor has proposed a solid starting point for mandate relief for county property taxpayers. We encourage you and your legislative colleagues to support them as the first steps in a comprehensive effort to enact real, meaningful and significant mandate relief.

The Governor's Budget includes important mandate relief proposals for counties including:

- A "hard cap" in county Medicaid costs,
- Pension reform,
- Early intervention health services, and
- Special education pre-school reforms.

However, as we will demonstrate, counties will need significantly more mandate relief over the long run, and many counties will need more mandate relief a lot sooner than many might have thought. Some counties do not have the ability to stabilize property taxes and maintain basic quality of life services that local taxpayers want and expect in the near term, without an acceleration of the Governor's proposals.

NYSAC has highlighted how a handful of these state mandates consume nearly the entire property tax levy in a typical county. Over the last two years NYSAC has identified how nine major mandates consume over 90 percent of a typical county's property tax levy. These include: Medicaid, Early Intervention, Special Education Pre-School, Pensions, Probation, Indigent Defense, Youth Detention, Safety Net and Child Welfare.

In 2012, for the 9 mandates alone, more than \$11 billion in property and other locally derived taxes will be used by Albany to subsidize state spending decisions. This represents 16 percent of the State's general fund. In other words, about 1 of every 6 general fund dollars spent in the State Budget is supported by a locally raised tax dollar.

The largest of all the mandates of course is Medicaid—this one mandate will cost county and New York City taxpayers \$7.4 billion in 2012, and consume nearly half of a typical county's property tax levy.

Unfortunately this is just the tip of the iceberg. Included with our testimony today are a series of white papers that highlight the top state mandates facing counties including Medicaid, pensions, early intervention health services, and special education preschool. Also included in your packet is a document that highlights more than 40 state programs that counties are mandated to administer and finance on behalf of the State.

It is important to note that each of these statutory mandates, in turn, can generate volumes of regulatory mandates that counties must adhere to in order to implement State programs.

The complexity and vast scope of these state mandated programs requires an enormous investment from local taxpayers. An investment that most states nationwide do not require of their local governments, which is a primary reason for New York's highest in the nation property taxes.

Because the State controls and defines the vast majority of mandates that counties administer there is limited capacity for counties to control costs. Therefore county officials have fewer levers to pull in order to provide property tax relief locally. The absence of mandate relief or significant programmatic reforms by the State creates a situation where local quality of life services delivered by counties are sacrificed in order to support the rising cost of State mandates. To make matters worse, even while local quality of life services disappear, property taxes still go up in order to balance local budgets driven by state mandated spending.

We recently used the last decade of revenues and expenditures as trends to project counties' fiscal outlook, and we are very concerned with what we learned. Our counties face a cumulative fiscal gap exceeding \$32 billion by 2020 if we have no mandate relief and the economy continues its slow recovery. Under this scenario the annual gap would reach \$6 billion in 2020. Even under highly optimistic projections cumulative deficits approach \$10 billion.

Without immediate and sustained relief from State mandates, property taxes will inevitably rise much faster than the allowable property tax cap in order to keep pace with unchecked growth in state mandates.

For the most part, a mandate for a county is the bill they receive from the State to support a State designed and controlled program. Mandate relief for counties comes in the form of lowering the bill counties must pay to support state programs.

We have not yet fully analyzed the impact of all of the mandate relief reforms proposed in the Governor's Budget, but we do estimate that the implementation of the hard Medicaid cap in the Governor's budget, which we believe is probably the biggest mandate reform initiative proposed that benefits county taxpayers, would reduce this cumulative gap by about 16 percent (under the conservative estimates scenario).

As you can see, we all have a lot of work to do in order to stabilize county budgets and more importantly reduce property taxes. High property taxes, driven in large part by State imposed mandates, continue to batter small businesses and families throughout New York and acts as a major impediment to the State's economic competitiveness and job creation capacity.

### **Impact of Key Mandate Relief Proposals in the Executive Budget for Counties**

#### **MEDICAID**

The Governor's proposal to cap the growth in the local share of Medicaid is a positive proposal for counties and moves in the right direction to help stabilize property taxes. To the degree that this "hard cap" can be accelerated, it should. An acceleration of this proposal would provide even more immediate relief to local taxpayers.

The Governor's hard cap in local Medicaid costs is the first step in building the foundation for a broader state assumption of all local Medicaid costs. There is legislation pending in both the Assembly and Senate that could achieve a gradual state assumption of local Medicaid costs that can help reduce property taxes in the long run (not just slow the rate of growth in property taxes). S.5889-B (Gallivan-McDonald)/A.8644 (Paulin), as well as A.8259 (Peoples-Stokes) / S.5740 (Grisanti) are examples.

Using local tax dollars to support a program the size of Medicaid is simply unsustainable, unfair (as highlighted in the Citizens Budget Commission report: A Poor Way to Pay for Medicaid), and impedes economic development. The CBC report can be reviewed online at

[http://www.cbcny.org/sites/default/files/REPORT\\_Medicaid\\_12122012.pdf](http://www.cbcny.org/sites/default/files/REPORT_Medicaid_12122012.pdf).

Additionally, in their final recommendations, the Medicaid Redesign Team (MRT) established by the Governor also supported removing counties from financing of the State's Medicaid program.

The Governor's Budget also reconfirms existing state law that calls for the State to take over all local government Medicaid administrative functions over the next several years,

as technology and state capacity allow. The Governor's budget proposal builds on recommendations from the MRT, and counties are committed to working with the Governor and Legislators to ensure that this transition maintains service delivery and access for Medicaid recipients and treats county property taxpayers fairly.

## **PENSIONS**

Since 2001, county payments to the state's common retirement fund to support required pension benefit costs for county workers (not including NYC) will increase by 2,400 percent by 2014. County costs will approach \$1.3 billion by 2014 and the average annual increase in pension costs for counties will exceed 30 percent for the five year period encompassing 2009 through 2013. By 2014, county pension contributions will equal about 25 percent of a typical county's property tax levy.

Poor investment returns, combined with generous expansions of pension benefits, have fueled the increase in costs. Recent reforms that created a Tier 5 helped to improve the long term prospects for pension costs, but counties, and the state, still face significant long term affordability challenges that must be addressed. Counties support the Governor's pension reforms as presented in his Executive Budget and we encourage the Legislature to work with the Governor to implement a Tier 6.

## **EARLY INTERVENTION**

Counties are required to fund 51 percent of the cost of this \$650 million program that provides services to infants and toddlers with developmental delays and disabilities. New York's expansive interpretation and implementation of this federal program places New York in the top three nationally for the number of children receiving services.

As provided under State law, county health departments coordinate all Early Intervention services and payments, and counties are responsible for paying 100% of the cost of these services in the first instance. By state statute these costs cannot be claimed until 9 months into the current school year, and as a result, counties often wait for more than a year for 49 percent reimbursement from the state.

As the State's budget problems have worsened, the State has shifted more costs to county tax payers to finance this program while also lowering the state financial commitment to support county administrative costs.

Another complicating factor is that despite the fact that nearly half of the children in the Early Intervention Program have private health insurance, insurance companies refuse to pay for these services even though the provision of these services requires a doctor's prescription. Counties and the City of New York are billing insurance companies more than ever before and in amounts exceeding the amounts billed to Medicaid, but the recoupment percentage remains low.

The most recent data shows a total of approximately \$95.5 million was billed to commercial insurers and only \$10.6 million was recouped, which is 14 percent.

The Governor's 2012-2013 budget proposal seeks to close the numerous loopholes that insurance companies' have continually slipped through, and which the property taxpayers have been forced to pay as a result, likely exceeding a billion dollars since the program's inception. Counties are extremely supportive of this proposal, and believe it is responsible to the children receiving services, and the property taxpayers footing the bill.

The Governor's language stating that insurance companies will now have the ability to participate in the EI meetings at which services for children are determined, is groundbreaking and appropriate. By placing insurance companies in the same room with parents, providers and counties, at the time services are determined, insurance companies will now have the opportunity to participate in the crafting of the package of services offered to a child. The result will be a comprehensive review of each child's needs and the most appropriate course of treatment.

Additionally, the creation of a fiscal intermediary will reform and streamline the payment processes, and also give the State Department of Health the ability to improve the timeliness of State reimbursement and allow for a lower contribution from counties to support program costs.

### **SPECIAL EDUCATION PRESCHOOL**

Counties have been mandated to fund preschool special education since 1989, when section 4410 of the New York State Education Law was adopted. Federal and State laws govern the preschool special education program and grant the legal authority to administer the program to the State and school districts. In New York, this arrangement creates a severe misalignment between the payer and those determining the level of service. The only responsibility given to the counties is to pay for the decisions made by the State and school districts. New York is the only state in the nation that involves counties in their preschool special education program, as funders. Counties pay 40.5 percent of the costs of the preschool special education program, or about \$450 million per year and growing.

The goal of the program is sound public policy. It provides children ages 3-5 with special needs the essential educational services they need to help them with skills development they may not otherwise receive. There is no fee for services to the family. There are no income restrictions on eligibility; if a child needs these services, they will get them. It is an entitlement for the worthiest population.

Counties view these as essential special education services, but no county in the State (outside NYC) has a department of education and the involvement of counties in this program resembles an unnecessary distraction from achieving the best outcome for the student.

The 2012-13 Executive Budget seeks to properly align the fiscal responsibility for this program with the appropriate decision-makers. The proposal estimates \$20 million in savings for counties in 2013, not including NYC. The Executive Budget proposes several

changes to both rationalize the existing Preschool Special Education financing system and eliminate potential conflicts of interest in the delivery of program services.

Counties believe the following are necessary reforms and move the program in the appropriate direction:

- Apportioning all growth above the newly proposed cap of 2011-12 school year costs equally to school districts, the State, and the county;
- Increasing the role of counties when providers request an exception to existing payment rates;
- Requiring justification when a distant provider is chosen over closer, suitable providers; and
- Prohibiting, in most cases, children being evaluated by the same agency that provides the child educational services or by an evaluator with a less-than-arms-length relationship to the agency, to avoid the inherent potential for conflict of interest in these relationships.

Counties also support reforms to how transportation services are currently delivered under the special education preschool services program. NYSAC supports legislation pending in the Senate and would provide options to parents to transport their own children to these services, while providing appropriate mileage reimbursement in cases when they do so (S.5173).

We stand ready to work with the Governor and Legislature to ensure meaningful reforms to special education preschool programs are implemented in an effective and thoughtful manner.

Finally, I wanted to mention two other items that we are hearing with increasing regularity from the county officials in many of your districts. The first is the difficulty that counties are having in getting home rule bills addressed by the State Legislature, and the second is the continuing problem of slow reimbursement from the State across a variety of programs counties administer on behalf of the State. Our counties could use the assistance of both your legislative houses to resolve these matters.

**Extended Written Testimony. Please contact NYSAC at 518-465-1473 for any questions you may have regarding this testimony, or visit our website at [www.nysac.org](http://www.nysac.org)**

### **STATE REIMBURSEMENT**

Counties primarily pay for state mandated services in the first instance and later receive partial reimbursement from the State later. As noted, some of these reimbursements take more than a year to complete. We are encouraged by efforts by the State to improve their processes for reimbursing counties and other vendors as quickly and efficiently as possible. However, reimbursements to counties are not required, under State law, to be timely and counties are not compensated for the carrying costs of late reimbursements. More work needs to be done to accelerate reimbursements to counties for services they provide on behalf of the state, including the provision of interest in cases where reimbursement is excessively delayed and in cases where payments are delayed due to a late state budget.

### **HOME RULE AUTHORITY**

Counties have long relied on their constitutionally granted home rule authority to make the most appropriate decisions for local taxpayers. Home rule requests are only submitted to the State after lengthy analysis and open comment by local legislators and concerned citizens. Most of these home rule requests concern local financing and budget decisions and are often designed to limit or prevent property tax increases by seeking revenues through non-property tax options. The irony is that these requests are usually driven by local government's inability to control the costs of state mandates they are forced to administer and fund. In recent years, most local home rule requests to grant a county the authority to increase local revenues to support escalating budget costs have been denied by the State Legislature. The outcome is usually a cut in local quality of life services, property tax increases, and often both.

County officials are locally elected and they fully understand the consequences of their home rule decisions and willing to make their case with local voters. We urge the Legislature to allow these home rule requests to move forward when presented.

### **HUMAN SERVICES**

Over the course of the last three years, New York State has made a distinct, consistent move to lessen its fiscal commitment to human services. The result has been a dramatic shift onto the property taxpayers for the cost of administering almost every major state mandated human services program. Despite the fact that counties are the administrative arm of the State—especially and most prominently in the human services arena—the 2009-10 enacted State Budget eliminated approximately \$300 million for the State Local Administrative Fund (LAF) as a discrete funding allocation and folded that into the Flexible Fund for Family Services (FFFS). In turn, the 2009-10 enacted State Budget funded the FFFS at \$1.3 Billion, giving the appearance of a “flexible fund” for counties—however, the Budget also simultaneously increased the Child Welfare Component Threshold (which is required in the FFFS) by \$100 million. This complicated, highly



technical action has left counties with a FFFS fund that is essentially “inflexible.” This has resulted in the fund already being spent before it’s handed out, and is therefore “inflexible.”

Programs for which the State no longer provides any state funding for administration include: Safety Net Assistance and Food Stamp Administration. This presents a conundrum of sorts for counties, as the State of New York requires that counties conduct eligibility determinations for Food Stamps and Safety Net Assistance—yet provides no funding. Complicating the issue is the fact that the recent recession has increased demand for Food Stamp by 41 percent across the State. Counties are enrolling more individuals and therefore there are increased administrative costs associated with both the Food Stamps Program and the Safety Net Program.

In an unexpected, surprising and again highly technical, complex move, the 2011-2012 final State Budget shifted the cost of the Safety Net Program to 71 percent county / 29 percent State, which severed the historic 50 percent state / 50 percent county partnership. At the same time, the State Budget tied this action to the full Federalization of TANF funding. However, the current economic downturn has increased Safety Net Assistance enrollment in record numbers, requiring counties to increase the administrative costs associated with the program.

Providing Safety Net services and support is one of nine major State mandates responsible for 90 percent of the county property tax levy statewide. When combined with a 2 percent property tax cap that is absent meaningful mandate relief, local budget pressures are quickly mounting. The gradual, but steady pullback in State funding support for a variety of human services programs including child welfare, adoption subsidies, food stamp administration, Family Assistance, Safety Net and youth detention shows the public that the State is moving away from its constitutional requirement to care for the needy, while shifting that responsibility on to local property taxpayers.

NYSAC strongly opposes this cost shift and any expansion of unfunded social services mandates on counties, and to stress the importance of funding the administrative costs of these varied programs.

#### **ADDITIONAL PUBLIC ASSISTANCE ACTIONS**

The Governor’s Budget projects Public Assistance caseloads to decrease by 2.2 percent during 2012-13—a 2.6 percent decrease for TANF families and a 2.9 percent decrease for families that have exhausted their five-year time limit on TANF. For singles and childless couples, the Safety Net caseload is expected to decrease by 1.2 percent in 2012-13. The 2012-13 Executive Budget proposes to maintain the same state/local share of Safety Net Assistance as enacted in the 2011-12 budget (29 percent State share/ 71 percent local). NYSAC firmly believes there are long term negative implications for the State reducing its fiscal commitment to Safety Net Assistance.

The 2012-13 Executive Budget also proposes to provide a five percent increase to the public assistance grant in July 2012 and a five percent grant increase in July 2013 to

replace the ten percent grant increase scheduled to take effect in July 2012. For the last three years, New York State has been paying the local share of the grant increase. As of April 1, 2012, counties will be required to pick up the local share for future grant increases. Combined with the local share of Safety Net Assistance at 71 percent, the proposed mandated increase will have a negative fiscal impact on counties.

The 2012-13 Executive Budget proposes to eliminate State funding for child support enforcement administration provided to local social services districts. The State would allow districts to retain certain child support payments currently sent to the State, and would also provide new Federal resources to districts to ensure there is no local financial impact. NYSAC will work with the State Legislature and Executive to ensure there are no cost shifts to local taxpayers under this proposal.

The current funding stream for child support administration provides districts with 66% federal reimbursement and 17% State reimbursement. Under the Governor's 2012-2013 Budget proposal, local districts would lose the 17% state reimbursement. The State would no longer use General Fund dollars to fund the cost of the administration of child support and instead would shift their share into the FFFS. It is anticipated that this proposal will have a negative fiscal impact on many counties, due to the short term and long term implications of the State removing its financial commitment to the administration of this program.

#### **CHILD WELFARE**

Another human services budget item with a fiscal impact to counties includes the reauthorization of child welfare funding, which is set to expire. The 2012-13 Executive Budget extends the provisions related to funding for child and family services, and allows the current 62 percent State / 38 percent county shares to continue. This funding was historically 65 percent / 35 percent but has been reduced, in past years, to a 62 percent / 38 percent share. The Executive Budget proposal codifies the lesser formula. This indicates a permanent shift to reduce reimbursements to counties. Also, the 2012-13 Executive Budget contains no separate appropriation for the Kinship Guardianship Initiative, which the State created as a new unfunded, mandated program. Additionally, the Kinship Guardianship program must be paid for by counties out of their Foster Care Block Grant funding. Almost every county's Foster Care Block Grant allocation is at capacity, and cannot support another State-created initiative absent a new funding stream. Again, this action illustrates the State's movement away from funding the Kinship Guardianship Initiative with a separate appropriation.

In short, fundamental reform of public assistance and human services issues can only be successful with meaningful mandate relief, as well as a policy and fiscal commitment from the state that is fair, consistent and adequate.

#### **JUVENILE JUSTICE/YOUTH DETENTION**

The 2012-13 Executive Budget proposal provides a capped appropriation of \$76.160 million for 49 percent State reimbursement for local secure and non-secure detention expenditures, or 62 percent reimbursement for Supervision and Treatment Services for

Juvenile Programs (STSJP) for any remaining portion not claimed by counties for reimbursement of detention expenditures for January 1, 2012 – December 31, 2012.

Additionally, the proposal provides \$8.614 million for NYC to develop their realignment plan, called the Close to Home Initiative, covering juvenile delinquents in non-secure settings. There is also \$8.376 million for supervision and treatment services for juvenile programs at a 62 percent state reimbursement.

If the Governor's proposal is successful, it would represent the second year without open-ended funding for detention services, which could shift some of the State share of the costs onto counties. Additionally, the Supervision and Treatment Services for Juveniles Program Block Grant was 100% reimbursable last year and under the Governor's current proposal, counties would only be reimbursed 62%.

The 2012-13 Executive Budget also creates the "Juvenile Justice Services Close to Home Initiative." The legislation authorizes NYC to provide juvenile justice services to all adjudicated juvenile delinquents who reside in the City, and are determined by the family court to need placement other than in a secure facility. NYSAC and counties are supportive of this initiative, specifically of the ability to pursue this innovative type of realignment process.

It has been a long-standing position of NYSAC that meaningful juvenile justice reform must also contain fundamental rate reform for youth facilities. Now that the Governor has identified juvenile justice reform as one of his priorities, it is imperative that rate reform be included. Rates are set and the methodology is determined by the New York State Office of Children and Families (OCFS). Recent discussions around the issue of juvenile justice reform have been focused on the City of New York negotiating with the Governor and State Legislature to develop a realignment plan to divert offenders from state facilities and shift interventions to community-based programs, under the management of and within the boundaries of New York City. This is evidenced in the 2012 Executive Budget proposal, "Close to Home Initiative."

While NYSAC supports New York City's option to pursue juvenile justice realignment, counties are also more than aware of the fact that rate-setting for youth facilities/state training schools is directly tied to the population within these facilities: the lower the population, the higher the rates. Consequently, when the youth detention population shifts or changes, as it would in the New York City realignment proposal, the youth detention rates for upstate counties would skyrocket. To illustrate: despite the State juvenile justice population decreasing dramatically over the past five years, the county and New York City's costs for youth detention have steadily increased. Additionally, current State law requires that the cost of maintaining empty or minimally-populated youth detention facilities be passed on to counties.

Herein lies the problem: the current cost for youth detention is unsustainable and is also one of the 9 mandates driving 90 percent of the county property tax levy statewide. A large factor driving these cost are OCFS retroactive rate increases for youth facilities/state training schools. In fact, State budget actions in 2010 shifted \$69 million

in costs to counties for State Youth Facilities, much of which was directly related to the failure of OCFS to properly manage and use Federal funds.

Counties cannot sustain enormous retroactive costs shifts, combined with the absence of consistent rate setting and billing, and the recently enacted local 2 percent property tax cap. It goes without saying that these actions place a tremendously unfair fiscal burden on counties and local property taxpayers. This is why it is essential to tie any juvenile justice realignment policy or reform directly to rate reform. Simultaneously, the State should prohibit any state budget, policy and regulatory actions that shift juvenile justice costs to counties.

Counties are willing partners with New York State in the issue of reforming one of the most important programs in our purview, juvenile justice. However, are not willing partners if the juvenile justice reform being discussed does not include an acknowledgement that the financing and rate-setting process for this program must also be fixed.

#### **WORKFORCE MANAGEMENT FLEXIBILITY**

Flexibility in how a county is able to manage its workforce can result in efficiencies in service as well as taxpayer savings. New York Civil Service Laws largely dictate how both the state and local government are able to manage public employee hiring, layoffs, promotions, transfers, demotions, disability rights, and disciplinary actions.

The proposed budget seeks to alter the Civil Service Law in multiple areas that allow for more flexibility on how the government may manage its workforce. Unfortunately for local governments, these proposed changes only apply to state employees and state agencies. NYSAC supports these changes and requests that county governments also be granted the management flexibilities proposed by the Governor.

One ability only granted to state agencies in the proposed budget provides that the Civil Service Department may authorize employment appointments without examinations for temporary professional positions and/or temporary positions that require special expertise or qualifications. The department must certify that this position is temporary in nature and state within public record why it would be impracticable to hold an examination for such position. The amount of appointments may not exceed 500 at any one time and temporary is defined as no longer than 60 months. These temporary positions may be abolished at any time for reasons of economy, consolidations or abolition of functions. This ability is only granted to state agencies. These flexibilities should be provided to counties, as they would help attract employees for a project or service that has a finite timetable and/or a technical skill set for a particular county goal.

This budget also provides for a procedure for certifying a new type of promotion list, titled "open promotion", using existing active "open competitive" and "promotion" lists. Additionally the budget would permit non-competitive employees to participate in competitive promotional exams. If granted to the counties, this change could allow for a larger pool of candidates for promotional opportunities, which in turn could allow for the best fit for the job.

The budget allows for non-competitive employees to transfer into competitive positions, with the approval of State Civil Service. This change could also benefit counties by creating a larger pool of candidates for transfer openings, allowing for more options for management to place the best fit in the open position.

Finally, the budget proposal authorizes the transfer of employees upon a merger or consolidation, allowing for the reclassification of the employees, without further examination or qualification, in order to align them with the new department or agency. In addition, transferred employees on an existing promotion list would be added to the promotion eligible list of the new department or agency, as Civil Service deems appropriate. If counties had this flexibility it would lessen the hardship of merging a county department, a reality for many counties during these tough financial times.

### **CHIPS (CONSOLIDATED HIGHWAY IMPROVEMENT PROGRAM)**

There are approximately 97,000 miles of local highways and 8,612 local bridges in New York State. Maintenance and safety of the local highways and bridges is a local municipality responsibility. The State helps fund local highway and bridge projects under the Consolidated Highway Improvement Program (CHIPS) and Marchiselli program.

Under the proposed budget this funding is maintained at 2011-12 levels at \$402.8 million (CHIPS \$363.1 M, Marchiselli \$39.7 M). Safety and infrastructure are top priorities for local governments. We thank the Executive Office for continuing to provide funding for this essential safety function. However, we are hearing from our county highway supervisors that this funding is not adequate for repaving and surface maintenance and considerable more funding is needed to address structural core maintenance of our roads and bridges. This structural repair concern is heightened after the extreme storms and water damage inflicted on our roads and bridges in the past few years. Accordingly, NYSAC requests that further funds, such as the proposed New York Works fund, are dedicated to help repair and maintain the structural integrity of our local roads and bridges for the benefit of all New Yorkers and those traveling through our great State.

### **NEW YORK WORKS**

The Executive Budget includes \$1.16 billion of new funding (\$917 million Federal and \$247 million State funds) under the New York Works program that will accelerate capital investment to maintain, repair and replace critical highway and bridge infrastructure, and to prolong the useful life of these assets. As stated above, NYSAC supports this new program and requests that this \$1.16 billion is used in part to help fund the structural repair and maintenance needs of local and county roads and bridges.

### **PROCUREMENT**

NYSAC commends proposals in the Executive Budget that allow for additional flexibility for county and local government procurement practices. The proposed budget achieves this flexibility by allowing for cooperative purchasing, otherwise known as “piggybacking.”

Cooperative purchasing is a procurement method whereby, if a government agency has already gone through the procurement (bid) process and awarded a contract to one or more vendors for a particular product or service, the contract can be “piggybacked” by other government agencies on the same terms and conditions.

Cooperative purchasing has been proven to reduce administrative and product costs, increase efficiencies and stretch shrinking budgets during difficult times. Cooperative purchasing aggregates the purchasing power of multiple government agencies in order to drive deeper discounts on goods and services.

Each state within the United States has its own laws addressing cooperative purchasing by local government agencies. Forty-eight states have either explicitly authorized cooperative purchasing or they have enacted a general “Joint Powers” statute or “Intergovernmental Cooperation” law that permits local public agencies to purchase from (or piggyback off of) cooperative contracts that were solicited by another public agency. Unfortunately, New York is not one of the 48 states that allow cooperative purchasing by local government agencies. The State’s purchasing statutes require all state and local government agencies to either use contracts solicited by the New York Office of General Services or perform their own solicitation.

By amending the State’s existing procurement statutes, cooperative contracts can be made available to counties in New York as another cost saving tool to stretch their reduced budgets and meet their purchasing needs.

NYSAC commends this proposal that would allow counties to utilize existing State contracts, and save taxpayer money in the process. We urge the Legislature to consider expanding this practice to allow for the ability to piggyback off all government contracts including federal contracts. All levels of government should be able to work together to access products and services at the lowest possible price. We owe it to the taxpayers to provide this cost saving measure and we can achieve this through an even greater ability to purchase cooperatively.

## **PUBLIC SAFETY**

### **Statewide Interoperable Communications Grants**

NYSAC fully supports the Executive proposal’s \$75 million appropriation for the Statewide Interoperable Communications Grant Program. Counties will take full advantage of these funds in this and future years, as their interoperable communications needs continue to grow and evolve with changing technologies. We urge the Legislature to work with the Division of Homeland Security and Emergency Services, Office of Interoperable and Emergency Communications to adjust the guidelines for these grants to ensure that these dollars can be spent flexibly by counties on the equipment they need the most—be that radios, 9-1-1 phone systems, or Next Generation 9-1-1 equipment. In future years we hope to see the expansion of this allocation beyond \$75 million so that more of these surcharge dollars are invested back into local 9-1-1 and emergency communications systems that have gone without state financial support for far too long.

### **Statewide Emergency Response Protocols for Local Governments**

NYSAC applauds the Executive Budget's proposals to improve the State's readiness to respond to storms, floods and other critical incidents through the Office of Emergency Management (OEM). Counties need the OEM to help them during times of crisis so that coordination among and between local governments can occur without delay. During an emergency, the most frustrating thing for local elected officials is to be unable to secure the help, equipment and supplies needed to help their residents and communities in need. Counties with assets and personnel that can assist their neighboring counties in distress need the State's assistance in coordinating the loaning of equipment. These new proposed guidelines will help ensure that there are clear procedures for mutual aid support between local governments. We thank the Governor, and his public safety and homeland security staff, for realizing this deficiency in the law and providing local governments with these much needed parameters under which to operate during an emergency.

### **Mandatory DNA Collection for Certain Crimes**

The Executive Budget proposes an important plan for expanding the number of DNA samples in the DNA database. DNA evidence has become an important tool in solving crimes and exonerating the falsely accused. However, the budget proposal creates a burden on local law enforcement and probation offices, which will have to devote additional staff time and resources to the collection and processing of these samples. DNA collection kits typically cost around \$25 apiece. While the state collects a \$50 fee for DNA collection, NONE of this money is given to the local government (Sheriff's office or probation office) for the cost associated with the DNA sample's collection.

While this proposal to expand the DNA database is an admirable one in the interest of public safety, we caution you to think of the unintended consequences of creating such a mandate. Certainly recent laws, such as Leandra's Law, were enacted with the best of intentions, but have placed onerous requirements on local probation and law enforcement offices that were unintended and unforeseen. If this proposal is to remain in the final budget, we urge the allocation of a portion of the DNA fee collected by the State to offset the costs to probation and Sheriffs' offices required to collect these DNA samples.

### **ENVIRONMENT**

#### **Hazardous Materials Recycling**

We support the proposed hazardous material recycling incentives that will help encourage companies that generate hazardous waste to treat that waste via recycling, rather than paying a fee to dispose of it. This will help create cleaner water and soil, and safer communities in our State.

#### **NY Sun: Solar Energy Program**

We support the tax incentives for residential solar equipment leases and the expanded sales tax exemption to include non-residential customers. These provisions will help accelerate the growth of the solar energy sector and related industries in New York State, and will benefit companies and, in turn, local economies.

### **AGRICULTURE LOCAL ASSISTANCE FUNDING AND THE ENVIRONMENTAL PROTECTION FUND**

We applaud the steady funding levels for Agriculture Local Assistance Programs and the Environmental Protection Fund (EPF). Counties and other local governments rely on these funds to help our farmers and landowners comply with environmental laws and regulations. We further appreciate that some categories under the EPF are now being utilized by the regional councils to fund regional economic development projects through the newly created consolidated funding application. This helps our communities to realize that investing in the environment and well-being of our land benefits New York's economy.

### **ELECTIONS**

There will be three primary elections in New York in 2012. The first scheduled primary is the presidential primary which will be held on April 24, 2012. The next primary to be held is the primary for federal office holders, which will occur sometime before September 2012 pending a federal court ruling. This is because the Military and Overseas Voter (MOVE) Act requires that absentee ballots be sent out to military and overseas voters at least 45 days prior to the general election. Finally, New York law requires that the New York primary be held on September 11, 2012.

To avoid duplication and promote efficiency, we encourage the Legislature to consider adding a provision to the budget to permit the New York primary election to be held on the same day as the federal primary. This would provide savings to local governments and streamline this year's elections processes. Alternatively, if the State elects to hold the federal primary and the New York primary on separate days, we request that the State assume all costs incurred by local governments for the New York primary election.

### **FOR MORE INFORMATION**

Please call the NYSAC offices at 518-465-1473 if you have any questions or email Dave Lucas, NYSAC Director of Finance and Intergovernmental Affairs at [dlucas@nysac.org](mailto:dlucas@nysac.org) for additional information.



# Preschool Special Education: A Summary and Call for Reform



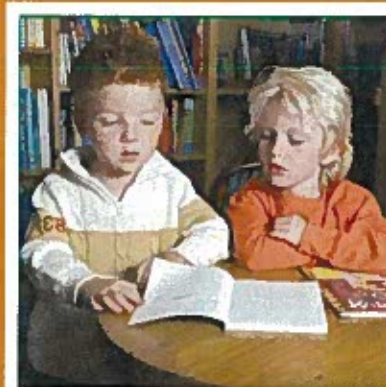
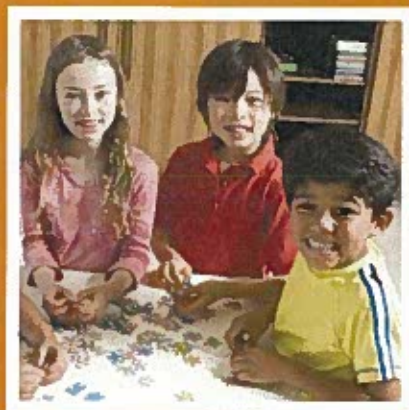
New York State Association  
of Counties

**November 2011**



**Mary Pat Hancock**  
*President*

**Stephen J. Acquario**  
*Executive Director*



# **PRESCHOOL SPECIAL EDUCATION: A SUMMARY AND CALL FOR REFORM**

## **OVERVIEW**

New York State's Preschool Special Education program provides essential services like speech and occupational therapy to special needs children between the ages of 3 and 5 years of age. It serves as a bridge between the Early Intervention program (from birth to 3 years old) and a formal Individual Educational Plan (IEP) in a school setting. Federal and State laws govern the preschool special education program and grant the legal authority to administer the program to the State and school districts. The problem with the program in New York is that it is misaligned between the payer and the provider of services. Counties have no real role in the preschool special education program, other than to bankroll it.

New York is the only state in the nation that involves counties in their preschool special education program, as funders. In New York, counties pay 40.5% of the preschool special education program, which, according to the latest data available, is over \$450 million per year. The State pays the remainder of the bill. The costs of the program are growing unchecked annually.

In 2007, the State convened a task force to look at this program. The 17 member Temporary Task Force on Preschool Special Education was co-chaired by the Division of the Budget, and had members representing every facet of the program including counties, providers, parents, and the State. The Task Force was charged with examining the program and issuing a report by November 15, 2007.

## **PROGRAM SERVICES**

The program itself is sound public policy, providing children ages 3-5 with special needs, essential services. These children are provided with educational services that will help them with skills that otherwise may not be possible. There is no fee for services to the family. There are no income restrictions on eligibility; if a child needs these services, they will get them. It is an entitlement for the worthiest population.

### **County Challenges with the Preschool Special Education Program**

**A 9 to 12 month lag in  
reimbursement**

•

**Lack of management  
or oversight responsibilities**

•

**Onerous claiming process**

•

**High transportation costs**



## COUNTY ROLE

Counties have been mandated to fund preschool special education in 1989, when section 4410 of the New York State Education Law was adopted. It mandated that counties and the City of New York fund the program, while providing them with no fiscal or programmatic oversight of the program. Basically, the program was shifted out of the Family Courts (where all matters child-related were determined) and into the counties' budgets. The only responsibility given to the counties was the cost of the program, not the ability to determine eligibility or provide the services. Which begs the broader question today, how can costs for this escalating program be contained and services improved when those making the decisions about services (i.e., cost) do not fund the bill?

While no counties (outside of the City of New York) have a department of education, counties maintain a presence at mandatory meetings for children in the preschool special education program, called the Committee on Preschool Special Education (CPSE). The CPSE members include a combination of the following: a chair person from a local school district, an early childhood teacher, a special education teacher, a parent, an evaluator, a private provider of services and a county representative. They meet to discuss the services that each child will receive. The county representative, however, is the only member on the CPSE with no actual authority, so their suggestions can be regarded by the rest of the committee, or not. General consensus is that that county role at these CPSE meetings has evolved into one of severe dependence; meeting chairs change frequently and the lack of any state training that many have come to rely on the county representative to run most meetings. County suggestions at these meetings tend to focus on keeping costs down, while improving service for the child.

## COUNTY BUDGETS

In 2011, one upstate county's Preschool Special Education budget allocation included \$8.5 million for preschool special education services (\$1.5 million of this is for transportation costs). The county allocated 275,000 for the cost of administering the program. Schools submit a cost report to the State Education Department (SED), SED then reviews the report for reasonableness and sends the bill to counties.

One example of the unpredictable, unsustainable, and high rates for preschool special education: in October 2011, a provider contracting with multiple counties had its rates raised \$22,000 per year, per child.

Counties are also required to pay 10% of the cost of disabled students, ages 5-21, who attend summer school. This program is separate from preschool special education but counties are required to pay for it. This county spent \$300,000 for summer session services in 2011.

## PROVIDER RATES AND COUNTY REIMBURSEMENT

Rates for preschool special education are set by the State Education Department (SED) and the Division of the Budget (DOB). Prospective rates for the school year are issued by SED, in consultation with the Division of the Budget (DOB). At the end of the school year, providers submit cost reports to SED, which then issues reconciliation rates. These reconciliation rates can be issued up to 3 years after the cost reports are submitted, but counties on average keep their files open for approximately 6 years in order to avoid any budget shortfalls. The county or provider is responsible for paying the difference between the prospective rate and the reconciliation rate. In one recent example a local upstate provider serving multiple counties had their reconciliation rate increase \$22,000 per year, per child. Multiple counties were therefore responsible for paying that difference. With the 2% property tax cap in place, rate increases such as this make it very difficult if not impossible for counties to properly plan their budgets.

Over the years, counties have managed to piece together ideas and efforts in order to best improve the antiquated process of mandated paperwork and bureaucracy for the program. Despite not providing the services, counties are clear about one thing: the program is about the children. And for that reason, counties continue to process every child's paperwork, by hand, in order to ensure that each child gets the services she needs.

## THE PROCESS

*Once a child is determined by the school district to need a certain number of services from a certain provider, the school district fills out a form, by hand, which they give to the county. The county then takes the information on the form, enters it into a database, which gets uploaded to the State Education department. Counties pay Provider A for all these services upfront; the State Education Department then verifies if the child actually received the services and repays the counties. The State is paying counties, who have no contact with the child or role in determining the eligibility of services, after-the-fact for the services.*

## TRANSPORTING CHILDREN FOR SERVICES

Counties are responsible for providing and financing transportation for all preschool special education students. The cost of transportation for preschool special education students is expensive, costing counties approximately \$90 million per year. New York State provides counties with a stipend for transportation on a per bus per day basis, up to a capped amount. Once a county is over that cap, the responsibility for transportation costs becomes 100 percent county. Every county in New York State is over their capped amount, due in large part to the exorbitant cost of contracting with private transportation companies.

Unfortunately, counties are precluded from contracting with their school districts for this service. The county in which a preschool child resides is responsible to provide suitable transportation, as determined by the board of education. This begins with the first day of service and is provided once daily from the child care location to the special service or program and once daily from the special service or program to the child care location for distances of up to 50 miles from the child care location. If the board determines that a child must receive special education services and programs at a location greater than 50 miles from the child care location, it must first request approval of the Commissioner of Education.

## RECOMMENDATIONS FOR REFORM

In 2007 the State's Temporary Task Force on Preschool Special Education's final report contained four primary and five secondary recommendations. One of the primary recommendations included capping county costs for the program and phasing out the counties' administrative roles by 2013. Unfortunately for the children and for local property taxpayers, none of the Task Force's recommendations have been implemented.

NYSAC continues to press the Governor and state legislature to adopt the recommendations of the Task Force, and also fundamentally overhaul this program by:

- Immediately capping the county fiscal contribution for the Preschool Special Education program, and gradually removing counties from the contractual & programmatic responsibilities to achieve net cost savings.
- Modernize the transportation program by passing S. 5173 (Gallivan), which ensures that special education children are provided with transportation to preschool by their parents if the parents have the means and ability to provide such transportation, and provides parents with reimbursement payments.



*The New York State Association of Counties is a bipartisan municipal association serving the counties of New York State including the City of New York. Organized in 1925, NYSAC mission is to represent, educate and advocate for member counties and the thousands of elected and appointed county officials who serve the public.*

**November 2011**

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# State Programs Funded By County Property Taxes



New York State Association  
of Counties

**December 2011**



**Mary Pat Hancock**  
*President*

**Stephen J. Acquario**  
*Executive Director*



# STATE PROGRAMS FUNDED BY COUNTY PROPERTY TAXES

## INTRODUCTION

Counties in New York have long served as the principal partner in administering the State's most critical programs in areas such as health, human services and public protection. But over time, the State has required county property taxpayers to subsidize an increasing amount of the State's program and services. In fact, in 2012 more than \$11 billion in local taxes will be used to subsidize State spending decisions. This represents 16 percent of the State's total general fund.

History has demonstrated that when the State experiences budget deficits, the State shifts costs to county taxpayers. This effectively requires county taxpayers to subsidize State programs. These subsidies to the State have forced property tax increases for more than four decades—and driven businesses and families out of New York at the same time.

Recognizing the correlation between high property taxes and a decreasing population and business infrastructure, last year State leaders enacted a cap on the growth of property taxes. County officials applaud the Governor and State lawmakers for focusing on the escalating property tax crisis we have in New York State. Now State leaders must take responsibility for their part of the property tax problem by reforming State programs funded through increased property taxes.

Last year, county leaders identified 9 State mandates that consume 90 percent of the entire county property tax levy collected statewide. But there are other State mandates that also eat into the county spending plan. This document addresses how property taxes are used to pay for State programs.

## MEDICAID

The program that exists in New York today bears little resemblance to the program initiated by Governor Rockefeller and the State Legislature in the mid-1960s. The New York Medicaid program was initiated by Governor Rockefeller in the 1960's, when New York State opted into the Federal healthcare safety net. At that time, Medicaid was built on the platform of county services to provide for the health and welfare of its residents. New York was one of few States in the nation to require counties to share in the cost of the program, and the only one to require counties to fund a full half of the State's cost in the program.

More than four decades later, Medicaid in New York has grown into the nation's largest, and most complex state system of healthcare funding and finance. Despite a 3 percent growth cap for counties instituted in 2005, local costs continue to rise by \$180 million each year—automatically.

In 2012, local taxpayers will fund \$7.5 billion of the State's Medicaid program—a far cry from the \$112 million in local funds provided in 1966.



## **PUBLIC ASSISTANCE**

### **Temporary Assistance to Needy Families**

Public assistance includes a variety of programs in New York but the core Family Assistance Program provides time-limited cash assistance and support services to low income families to help them achieve self-sufficiency. Funding for Family Assistance (TANF) in New York is currently reimbursed 100 percent by federal funds. It is unknown how long this funding will continue due to the caseload increases. That funding mechanism went into place in SFY 2011-12.

### **Safety Net**

New York's Safety Net program provides assistance to non-families (childless adult couples, single adults, people that have exceeded their five year limit on Family assistance and others). Cash assistance and other supportive services similar to Family Assistance are provided in this program. Currently, Safety Net Assistance is funded at 71 percent counties and 29 percent state. That went into effect SFY 2011-12. Together, the different funding percentage advantaged some counties (lowered costs) while in others, it was a disadvantage (raised costs). The primary reason behind the impact was based on percentage of the caseload in the different programs—if most of a county's cases were non-TANF, then it was likely that the shift in funding cost that county additional money. There is no timeline for how long Safety Net will be funded at the 71/29 split (it was one-year language).

### **Child Welfare**

#### **Child Welfare, Protective and Preventive Services**

Counties administer and fund a share of the costs of providing child welfare services to children and families in need. These activities include services, interventions and investigations designed to help prevent child abuse and protect children's welfare. Prevention services can cover a wide array of activities and family supports. Child protection services are required in more intensive cases and are often provided at the direction of the court system. Currently, the State funds about 62 percent of the non-federal share of these services and counties and New York City cover 38 percent. In recent years the State Legislature and Governor have cut State support for child welfare services and forced counties and New York City to make up the cuts out of local budgets. Over the last two budget cycles the State has cut its share of funding, shifting about \$60 million in costs to counties. These cost shifts and cuts have come with minimal relief from State mandates in these programs resulting in direct cost increases for local taxpayers to support State programs.

# STATE PROGRAMS FUNDED BY COUNTY PROPERTY TAXES

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## **Emergency Assistance for Families and Individuals**

County departments of social services provide emergency assistance including aid, care and services to meet the emergency needs of a child or a household in which a child is living.

### **Foster care**

Where a child is identified by a county social services department as being considered for placement in foster care, within thirty days from the date of such identification, an assessment of the child and his or her family circumstances must be performed. Where a child is removed from their home, within thirty days of such removal the county department of social services must perform an assessment of the child and his or her family circumstances, or update any assessment performed when the child was considered for placement. Children are placed in foster care either by order of a court (involuntary) or because their parents are willing to have them cared for temporarily outside the home (voluntary).

An involuntary placement occurs when a child has been abused or neglected (or may be at risk of abuse or neglect) by his or her parent or someone else in the household, or because a court has determined that the child is a “person in need of supervision” or a juvenile delinquent. The court orders the child removed from the home and determines the length of the placement.

A voluntary placement occurs when parents decide that they are temporarily unable to care for their child for reasons other than abuse or neglect. For example, the family is experiencing a serious medical, emotional, and/or financial problem. The parents sign a voluntary placement agreement that lists the responsibilities of the parents and the agency during the child’s placement. In the case of a voluntary surrender, however, the parents voluntarily and permanently give up all parental rights and transfer “custody and guardianship” to an authorized agency.

### **Adoption Services**

County departments of social services must provide adoption services for each child in their care. These services may be provided directly or through the purchase of service. These services are to include the evaluation of a child’s placement needs and pre-placement planning, recruitment of and homestudy for prospective adoptive parents, training of adoptive parents, placement planning, and supervision and post adoption services.

**Enforcement of Child Support:** County departments of social services must establish a single organizational unit to assist the state in the location of absent parents, establishment of paternity and enforcement and collection of support in accordance with the regulations of the department. To aid in the enforcement and collection of support, each social services district must establish a support collection unit to collect, account for and disburse funds paid pursuant to any order of child support.

## **Other Social Services**

### **Supported Employment**

Supported Employment services are support services that are needed by individuals with severe disabilities to obtain and sustain supported employment. Supported employment services also include transitional employment services for individuals with severe and persistent mental illness.

### **Adult Protective Services**

Adult protective services are those services provided to individuals without regard to income who, because of mental or physical impairments, are unable to manage their own resources, carry out the activities of daily living, or protect themselves from physical abuse, sexual abuse, emotional abuse, active, passive or self neglect, financial exploitation or other hazardous situations without assistance from others and have no one available who is willing and able to assist them responsibly.

### **Domestic Violence**

To the extent that such shelter and services are available and necessary, social services districts must offer and provide emergency shelter and services at a residential program for victims of domestic violence who are eligible for public assistance or applied for public assistance and care during the time they resided in a residential program for victims of domestic violence.

### **Personal Care Assistance**

Counties are responsible for costs associated with providing assistance and instruction in managing and maintaining a household, dressing, feeding, and incidental household tasks for persons at home because of illness, incapacity, or the absence of a caretaker relative. Such services shall be provided by persons who meet the standards established by the department of social services.

## STATE PROGRAMS FUNDED BY COUNTY PROPERTY TAXES

**The following is a list that captures the major state mandated functions within the above stated social services programs, but are by no means the only social services mandated facing County departments of social services**

1) All counties must provide the State with all local welfare administration rules, regulations, and procedures of DSS operation; 2) the State has the authority to approve or deny the rules, regulations and procedures provided by the county; 3) guidelines over employee duties and responsibilities regarding confidentiality of clients is controlled by the state, 4) each county is required to establish and maintain a local advisory counsel 5) the requirement of the creation and operation of a child support collection office and staff 6) the requirement of the creation and operation of a child support enforcement office; 7) the process in which a county determines and implements public assistance needs; 8) the requirement to create and the fashion in which public assistance case records are maintained; 9) the requirement and function of distributing and making available informational documents and forms; 10) the form and function of notification of and the ability to provide a fair hearing process for DSS clients; 11) the process to determine eligibility and then provide the service for the following resident needs-medical assistance (Medicaid), case management of pregnant or parenting adolescences, child assistance programs aid to aged, blind or disabled, Family Assistance, Safety Net assistance, public institutional care, emergency assistance to needy families with children, refugee financial and medical assistance, food stamp programs, home energy assistance, family and children services 12) Form and function of fraud prevention and enforcement.

These statutory mandates have promulgated hundreds of additional regulatory requirements that county departments of social services must follow.

## PRESCHOOL SPECIAL EDUCATION AND EARLY INTERVENTION

### Pre-School Special Education

Chapter 23 of the Laws of 1989 established the Preschool Program for Children with Handicapping Conditions-Educational Program as Section 4410 of the Education Law. This law included a provision to reduce the county fiscal liability to 25 percent by the 1993-94 school year. Instead, counties now pay 40.5 percent of the program costs and 100 percent of the costs over the State mandated cap on the costs for transporting these children to their service providers. At the same time that counties' share has grown, the total costs for this mandated program have grown exponentially, from \$96 million in 1989 to over \$1 billion in 2010, with the county's 40.5 percent share being \$420 million. The federal and state law places responsibility for the program with the educational system and gives decision-making authority to school districts, even though counties continue to bear the financial burden for service and programmatic decisions.



## Early Intervention

The New York State Early Intervention Program (EIP) is part of the national Early Intervention Program for infants and toddlers with disabilities and their families. First created by Congress in 1986 under the Individuals with Disabilities Education Act (IDEA), the EIP is administered by the New York State Department of Health through the Bureau of Early Intervention. In New York State, the Early Intervention Program is established in Article 25 of the Public Health Law and has been in effect since July 1, 1993. To be eligible for services, children must be under three years of age and have a confirmed disability or established developmental delay, as defined by the State, in one or more of the following areas of development: physical, cognitive, communication, social-emotional, and/or adaptive. There is no income eligibility for the Early Intervention Program. Counties are responsible to pay 100 percent of the cost of Early Intervention services in the first instance, with the State reimbursing counties 49 percent after a nine month lag.

## PUBLIC SAFETY—INDIGENT DEFENSE

### Indigent Defense Services

Under federal constitutional mandate to the State, in 1965, New York enacted Article 18-B of the County Law. This law required each county and New York City to establish a plan to provide counsel to indigent defendants.

The law allowed these municipalities to choose between several options to provide such service including; 1. public defender office, 2. designation of a legal aid society, 3. adopt a local bar association plan or 4. a combination of the above options. The law mandated that each plan provide for investigative, expert and other services necessary for adequate defense. One of the major problems with this system was that it placed significant financial burden on the counties

Though challenged both legally and criticized through reports of the statewide associations and the chief judge this system is still in place though the statewide partial reimbursement mechanism has been changed for the 2011 fiscal year. In addition a new oversight body has been created.

# STATE PROGRAMS FUNDED BY COUNTY PROPERTY TAXES

## PUBLIC SAFETY—PROBATION

### Probation Services, Leandra's Law compliance

Probation services are provided by counties as mandated under NYS Executive Law. Local probation departments provide services including intake, diversion, investigation, supervision of probationers and other special or related programs. Probation supervision is performed by probation officers to ensure probationers abide by and remain accountable for the conditions set for them by the court in their sentence. Probation is a rehabilitative service and a critical alternative to incarceration (ATI) program in New York State.

Over the last several decades, State reimbursement to counties for probation has dwindled, leaving counties to shoulder an increasing share of the costs for this program—now 88% of costs are now supported by county taxpayers. Meanwhile, probation officers are enduring greater caseloads due to the creation of more State programs which have increased the number of individuals sentenced to probation. These include the ignition interlock monitoring program created under Leandra's Law, and the Rockefeller Drug Law reforms, which changed sentencing requirements for drug offenders.

A multitude of services and functions a county probation department provides are mandated by the State including, but not limited to the creation and filing of an annual Probation staff development plan, the implementation of a staff development officer, methods governing case records management, procedure involving investigation method and investigation reports, maintenance of confidential information, method of supervision of probationers, procedure concerning intake operations, handling of interlock casework (including Leandra's Law supervision requirements) supervision of conditional release candidates and the requirement of sex offender case management.

## PUBLIC SAFETY—JUVENILE JUSTICE

Juvenile Justice includes services needed when a youth commits certain actions that would normally rise to the level of crimes or misdemeanors if not for the age factor (under 16). A county's probation department provides intake services to juvenile delinquents to divert youth from the courts. Diversion can include services provided by the county that make filing the JD matter with Family Court unnecessary. If diversion is not practical this matter is referred to the presentment agency (County Attorney) which in turn files a petition and presents this matter to Family Court.

### Juvenile Detention (Secure and Non-Secure Costs)

A family court judge determines if the youthful offender should be placed in secure or non-secure detention. This determination is not made by a county official, however the costs associated with this determination are a county requirement to pay.

## **PUBLIC SAFETY—OTHER MANDATES**

The following is a list of other public safety services and programs counties provide that are unfunded or underfunded.

### **Corrections/County Jail**

Each county is required to maintain and operate a county jail. A county jail is necessary to house and secure individuals that have been convicted to sentences of less than a year or for individuals being transferred to State prison.

A multitude of services and functions a county jail provides are mandated by the State including, but not limited to, construction and renovation to the county jail, inmate admission procedures, security and supervision procedures, inmate personal hygiene protocols, inmate discipline procedure, administration of inmate good behavior benefits, visitation procedures, inmate food service standards, inmate health service standards, classification of inmates, sanitation standards, personnel standards including minimum staffing, reportable incidents procedures, inmate exercise standards, inmate grievance program protocol, facility capacity levels, educational services for youthful inmate standards and jail employee benefits such as municipal disability payments as stipulated under General Municipal Laws.

### **Law Library in County Jail**

Each county is constitutionally required to provide inmates with legal research material. This traditionally meant the requirement to operate and maintain a law library for the inmates. However some jails and prisons are looking to satisfy the law library requirement by providing computers with legal information provide within them instead of books, current law does not allow them to do so. Both systems require start-up, maintenance and security costs.

### **Staffing for State and County Court**

Correction officers provide security within State and County Courts. This includes, but is not limited to the secure transpiration and supervision of inmates when they are called before the court.

### **Prosecution Services**

All counties maintain and operate a District Attorney's Office. This office provides the essential service of prosecuting crimes, misdemeanors, and traffic violations that are committed within their county. The District Attorney functions include investigation responsibilities. Prosecution of matters within the New York State Court System can be far ranging from town and traffic court to county, supreme, and appellate courts. Accordingly, a District Attorney's office must be equipped with experienced prosecutors that understand the demands that vary from court to court.

# STATE PROGRAMS FUNDED BY COUNTY PROPERTY TAXES

## Persons in Need of Supervision (PINS)

A “PINS” is an individual under the age of 18 who requires supervision due to behavior deemed as ungovernable disobedience. These acts include becoming a runaway, habitual truancy or acts that would be deemed as violations of the law if not for their age. Counties have the obligation to provide PINS supervision. This includes providing intake services from Probation or DSS for diversion of PINS matters, and the County Attorney’s Office filing PINS petitions, providing fact finding and participating in the Family Court hearing process.

One outcome of these hearings is that a Family Court judge can order a PINS to a non-secure facility or housing. The a non-secure facility or housing determination is not made by a county official, however costs associated with this service are a county requirement to pay.

## OTHER MANDATES

### Community Colleges

Community colleges may elect to collect operating chargebacks for nonresident students. A nonresident student is a student who has resided in New York for at least one year, but has resided outside of the sponsorship area during a portion or all of the six months preceding the date of the application for a certificate of residence. The operating chargeback rate per full-time student is equal to the community college sponsor’s actual contributions, including appropriated fund balance. To collect the chargeback, the president of the college or designee submits to each county a list of nonresident students attending the college on the basis of a certificate of residence and a voucher for the amount payable by each county for these students.

### Article 6 Public Health Services

Article Six of the Public Health Law currently provides a base grant, then promises State reimbursement for 36 percent of local health department costs for core public health services. These local mandated public health services include investigation and control of communicable diseases, identification and abatement of lead hazards to prevent childhood lead poisoning, perinatal care, restaurants inspections, monitoring and protection of drinking water and injury prevention.

### Rabies/Disease Control

County health authorities are responsible for all costs associated with the suppression of human rabies. Additionally counties are responsible for disease control. This include activities to control and mitigate the extent of non-infectious diseases, particularly those of a chronic, degenerative nature, and infectious diseases. Such activities shall include surveillance and epidemiological programs, and programs to detect diseases in their early stages. Specific activities shall include immunizations against infectious diseases, prevention and treatment of sexually transmissible diseases, and arthropod vector-borne disease prevention.



## **Family Health**

Every four years, counties are required to submit a public health services plan. One element of public health services is family health. Family health includes activities designed to reduce perinatal, infant and maternal mortality and morbidity and to promote the health of infants, children, adolescents, and people of childbearing age. Such activities shall include family centered preinatal care and other services appropriate to promote the birth of a healthy baby to a healthy mother, and services to prevent and detect health problems in infants, young children, and school age children.

## **Coordination of community based mental health services**

County departments of mental health/mental hygiene are responsible for the coordination and oversight of all community services to persons with alcohol and substance abuse problems, mental illness, mental retardation and/or developmental disabilities.

## **Substance Abuse Services**

Counties are required to provide substance abuse services either directly or by purchase from a public or private non-profit agency. These services must be by the state division of substance abuse services and any facility furnishing these services must be supervised and approved by the state division of substance abuse services.

## **Board of Elections**

Each county is required to operate a Board of Election which is responsible for election operation and functions for all government elections within the county. NY Election Law 3-400 (3) a sets the number of voters per election district at no more than 1150. This requirement directly impacts the number of election inspectors, election booths, and building space that the County Board of Elections must provide.

## **Consumer Protection—Department of Weights and Measures**

Each County is required to maintain and operate a Department of Weights and Measures in order to ensure county consumer protection. Department of Weights and Measures has the duty to inspect and test company devices regarding the weight and measurement of sales products. State mandates regulate how a County Department of Weights and Measures must inspect and test weight and measurement devices used by businesses as well how to the Department weighs and measures, products and goods sold within a county.



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**December 2011**

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**Reforming  
the way we  
finance Medicaid  
will lead to  
taxpayer  
accountability**



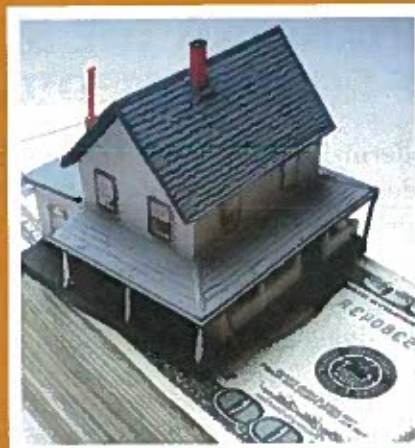
New York State Association  
of Counties

**January 2012**



**Mary Pat Hancock**  
*President*

**Stephen J. Acquario**  
*Executive Director*





## REFORMING THE WAY WE FINANCE MEDICAID WILL LEAD TO TAXPAYER ACCOUNTABILITY

For decades, a series of Governors, in collaboration with the State Legislature, have created a complicated system of “off-budget” financing to pay for Medicaid. The largest source of this off-budget financing is derived from local property taxes in most counties (New York City uses a different combination of local taxes to support State mandated Medicaid costs). Because the State Legislature and successive Governors have used county property taxes to pay the state’s Medicaid bills, the State has a massive Medicaid program, spending over \$1 billion per week covering nearly 5 million New Yorkers.

The cost to county taxpayers and New York City residents and businesses to subsidize the State’s Medicaid program has risen to \$7.3 billion. In conjunction with several other major State mandated programs and services counties finance and provide on behalf of the State, the total local county and New York City contribution to support spending in the State budget will exceed \$11 billion in 2012. This represents nearly 16 percent of total State general fund spending coming from local taxes. It has become unaffordable and unsustainable for local taxpayers to subsidize State spending decisions, especially the State’s Medicaid program.

### FIRST PRIORITY IS TO ALIGN PROGRAM CONTROL WITH FISCAL ACCOUNTABILITY

In December 2011, the Governor’s Medicaid Redesign Team issued a final report to the Governor. One of the recommendations states: “The State should develop and implement a plan for more sustainable Medicaid financing that phases out reliance on local taxes.”

In addition, bi-partisan legislation introduced in the State Legislature, S.5889-B/A.8644 can help lower New York’s highest in the nation property taxes. The bill’s passage would ensure New York’s Medicaid program becomes fiscally sustainable over the long run and would hold State lawmakers accountable for their program decisions to expand the size and scope of Medicaid. The State takeover of county Medicaid costs will lead to lower property taxes. This will directly enhance New York’s economic competitiveness and improve economic opportunities for all New Yorkers.

### FINANCING THE STATE TAKEOVER OF COUNTY MEDICAID COSTS

Modernizing Medicaid finance will increase accountability to property taxpayers. Last year, state leaders enacted proposals to close a \$10 billion State budget gap. Taxpayers are now requesting the Legislature and Governor build on this success and ensure these reforms, which also included a property tax cap, can be successfully implemented by giving counties the necessary tools to manage the property tax cap, and continue local service delivery. Removing counties from the financing of Medicaid is the single most important mandate relief that can be achieved in 2012.

**Apply MRT reform savings to mandate relief.** Continuing to build upon Governor Cuomo’s Medicaid Redesign Team (MRT) efforts will generate tens of billions of dollars in general fund savings over the next decade compared to the historic growth in Medicaid. A significant portion of these savings can be directed to eliminating the local taxes financing the State’s Medicaid program.

### **Pursue a federal Medicaid waiver to leverage savings that can be applied to property tax relief.**

The MRT reforms will also generate similar savings for the federal government. The State should pursue a broad-based federal 1115 Medicaid waiver to leverage these federal savings and thereby reduce state spending for public health insurance programs. Some of these savings can also be used to support the State takeover of county Medicaid costs.

**Allow federal health care reforms to cover New Yorkers.** The Affordable Care Act (ACA) offers a once in a generation opportunity for New York. State leaders should implement a multi-year phase in of the full State assumption of county Medicaid costs in conjunction with the Medicaid Redesign Team reforms and bolster the assumption of local costs with savings opportunities that can be provided by the rollout of federal health care reform and the recovery of state revenues in the future. Any savings should be used to eliminate the current property tax subsidy local taxpayers provide to the State general fund to support New York's largest in the nation Medicaid program. For example, the Federal health reform law provides 90 percent federal financing for Medicaid populations the State currently pays for (childless adults) and this change will save New York up to \$1.5 billion annually. We need to act now to set a course in motion that takes advantage of this window of opportunity.

Additionally, the Federal Law significantly reduces New York's required match for the federal child health insurance program (saving close to \$100 million annually), as well as the required match for operating Medicaid information systems. These changes can save New York hundreds of millions of dollars annually in the future.

Upon full implementation, the State will also have the option to modify its current Medicaid eligibility for populations above 138 percent of the federal poverty level as those individuals will be eligible for new federally subsidized health care through statewide health insurance exchanges. Moving current recipients from the State Medicaid Program to health insurance exchanges, which will provide 95 percent federal subsidies for low income folks just above the new federal threshold, can provide annual savings of \$400 million or more.

Finally, with the availability of federally subsidized health insurance for all with incomes under 400 percent of the federal poverty level, the State should do a top to bottom review of all health care-related programs they currently fund to see if the State would be better served by eliminating or scaling back programs that reach this federally targeted group. This review should also include all tax, and other, subsidies the State provides to encourage small businesses and individuals to buy health insurance coverage; and subsidies designed to expand the adoption of certain public health goals like healthier living, health quality and promotion—these are all things the federal government is now saying they will fund with their resources under the new model.

These federal reforms and subsidies provide just a few examples of how New York could lower its current Medicaid expenditures and provide resources to lower local property taxes, without dramatically impacting health care. This review should be undertaken even in the absence of federal health reform. New York's Medicaid Program and all public health spending must be reevaluated with a focus on a modern, patient-driven system that ensures public integrity, improves patient outcomes, and places it on a fiscally sustainable path.



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# Achieving Balance

## The Need for Further New York State Pension System Reforms



New York State Association  
of Counties

**January 2012**



**Mary Pat Hancock**  
*President*

**Stephen J. Acquario**  
*Executive Director*



## ACHIEVING BALANCE:

# THE NEED FOR FURTHER NEW YORK STATE PENSION SYSTEM REFORMS

## BACKGROUND

The rising cost of public employee pensions continues to be a central focus in the State Capitol. Government fiscal watchdogs have also expressed heightened concern about the high cost of government in New York, fueled in part by increases in public pension costs. Governor Cuomo has a significant pension system overhaul pending before the Legislature, and numerous groups have offered additional reforms as a follow on to Tier 5 pension modifications enacted in 2009.

For more than a decade County government officials have also raised significant concerns about high pension contribution cost increases. These increases largely stem from a combination of generous pension benefit expansions enacted by the State Legislature in 2000 and inconsistent investment returns over this same time frame.

Less than a year after the Legislature significantly expanded pension benefits in 2000, largely based on the assumption that record investment returns from the booming 1990's would continue (or the gains would be preserved), the dot.com bubble burst on Wall Street, the terrorist attacks of 9/11 occurred, the country slipped into recession and the common retirement fund experienced three consecutive years of negative returns. The negative returns are compounded because the state controlled common retirement fund (CRF) assumed an eight percent return in each of those years. The combination of these events drove up

**"NYSAC has consistently raised concerns about the affordability of the comprehensive pension reforms enacted by the Legislature this session. Although the strong financial position of the Common Retirement Funds, indicates that there will be no major increases in costs to local governments in the near future, the benefit enhancements enacted, coupled with a major downturn in the economy could result in increased employer contributions and higher costs to counties in the long term."**

**~ excerpt from a June 23, 2000 NYSAC report summarizing pension system changes enacted by the State Legislature and signed into law by the Governor in 2000.**



costs for the state and local governments over the last decade which has culminated in unprecedented annual increases over the last several years (and for several more years to come).

The ups and downs of investing are well known to all and the associated risks are accepted by those who rely on stock market returns to support the cost of their future plans. Unfortunately, in the case of public employee pension benefits, state and local property taxpayers are “accepting” the risk (unknowingly) to support guaranteed monthly payments for public employee retirees and future retirees. It is critical to point out that the common retirement funds rely overwhelmingly on investment returns to support annual pension payments to retirees.

Over the last 20 years, 82 percent of common retirement funds revenue came from investment returns, 14 percent from employer contributions (the state and local governments/taxpayers) and 4 percent from employee contributions. As the chart highlights, in the nearly 12 years since the Legislature greatly expanded pension benefits, the value of assets in the common retirement fund today is about that same as it was in 2000. When investment returns lag tax payers must pick up the slack. Much of the pension reform debate today is centering on:

#### NYS Common Retirement Funds Performance

Fiscal Year Ending 3/31	Rate of Return	Value of Assets (\$ in billions)
2000	17.8%	\$127.1
2001	-8.7%	\$112.4
2002	-2.8%	\$111.2
2003	-10.2%	\$95.6
2004	28.8%	\$119.2
2005	8.5%	\$128.0
2006	14.6%	\$142.6
2007	12.6%	\$156.6
2008	-2.6%	\$155.9
2009	-26.4%	\$110.9
2010	25.9%	\$132.6
2011	14.6%	\$149.5
Sept. 2011	n/a	\$133.8

- What is an affordable and appropriate pension program for taxpayers and public servants? A guaranteed defined benefit as exists today for public employees? Or something more closely resembling a 401(k) defined contribution model that dominates the private sector today?
- Who should absorb more of the risk of a pension benefit, the employer (taxpayer) or employee – regardless of defined benefit or defined contribution model?
- What can be done to control annual funding spikes that are currently impacting counties and other local governments?
- Is there abuse in the current system needing to be addressed?

Tier 5 pension reforms effective for new public sector hires after January 1, 2010 started to address many of the abuse issues and began a gradual shift in the balance toward the employee, but the financing burden and risk still lies squarely on the shoulders of employers (taxpayers).

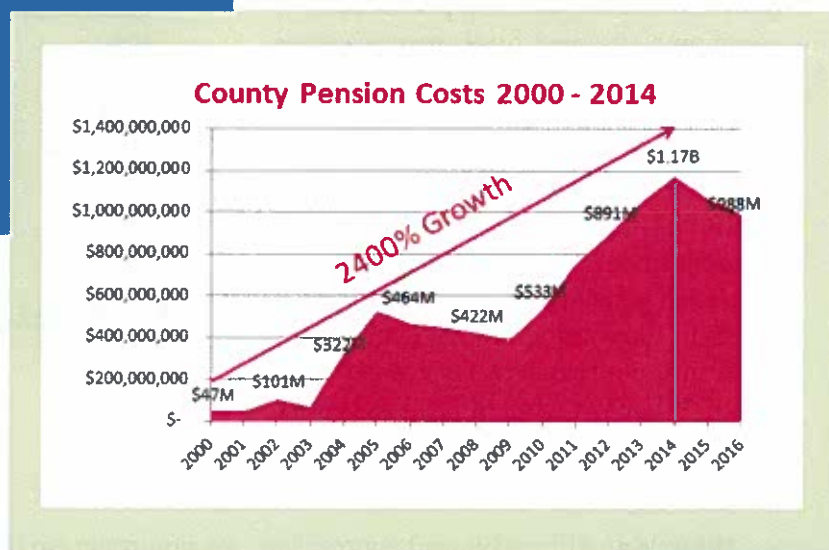
## YOU CAN CHECK-IN, BUT YOU CAN NEVER LEAVE

Nearly all local governments have elected to participate in one of the State's common retirement funds (New York City has its own), but once a local government enters the system it cannot leave it. This has become problematic because over the years the state legislature has expanded the level and scope of benefits provided under the State's pension system (although, under Tier 5 reforms, they reversed course on some of the expansions as they found them too expensive as well). Even though local governments may ultimately deem new benefit expansions granted by the Legislature as too generous or unaffordable for local taxpayers to support, there is no option other than paying the pension bill requested by the State.

For counties, pension costs will have increased by nearly 2400 percent between 2001 and 2014, rising from an annual contribution of \$47 million to nearly \$1.2 billion. The average annual increase in pension costs for counties will exceed 30% between 2009 and 2013 and for the time being represent the fastest growing segment of county budgets. These skyrocketing costs end up as increases in the county property tax bill, or are funded by a reduction in local quality of life

services provided by counties that most residents have come to expect including services for the aged and our youth, road maintenance and construction, sheriff patrols and crime prevention, economic development and supporting public parks and cultural activities, to name just a few.

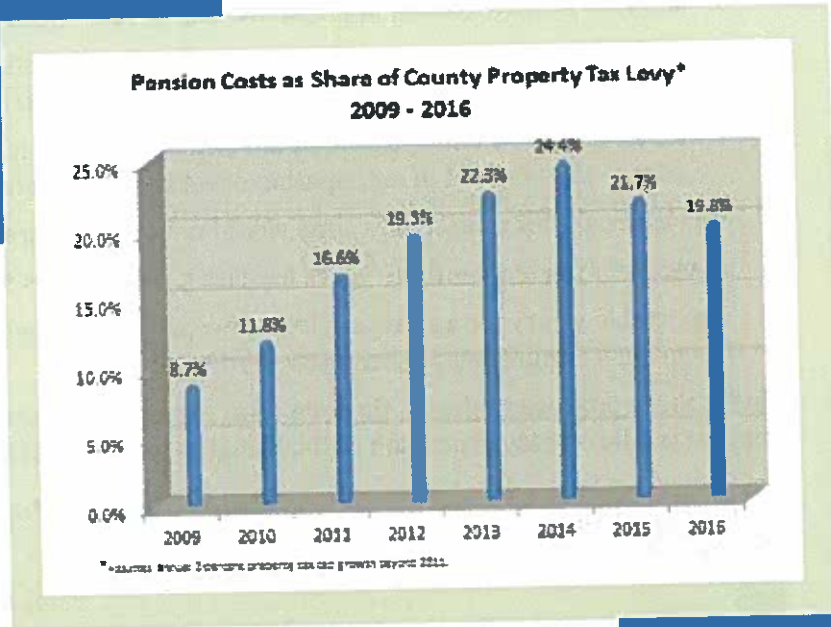
In addition to being the fastest growing segment of county budgets, these annual pension contribution increases are also becoming a larger proportionate share of county budgets. The implementation of the 2 percent property tax cap severely complicates the budget picture for county officials. Between juggling the cost of dozens of major state mandates (including state defined pension costs for county employees),



providing local quality of life services local residents have come to expect, and taxpayer frustration with increasing property taxes—county officials have little room to maneuver under the current system.

County officials are highly sensitive to the struggles of property tax payers, and their goal is to limit tax increases as much as possible (as expected by the public) under the recently enacted property tax cap, this means that rising pension costs over the next several years will consume an increasing share of a

typical counties' property tax levy. By 2014, nearly one of every four county property tax dollars will be dedicated to support employee pension costs that are required to be paid under state law.



## PENSION REFORM OPTIONS

Governor Cuomo has a significant package of pension reforms pending before the Legislature. The major pension reforms proposed by Governor Cuomo that would occur for typical public sectors workers (not involved in corrections, police and fire activity) include:

- Require an employee contribution of 6 percent of pay for all years of service. Today most public employees (Tier 3 and 4), pay 3 percent for the first 10 years in the public pension system and no contribution after 10 years—Tier 5 reforms effective in 2010 require all public employees in the common retirement fund to contribute 3 percent per year throughout their public service employment;
- The service retirement benefit would be 1.667 percent of final average salary for the first 30 years of service, plus 1.5 percent for each year after 30 years (today the service retirement benefit increases from 1.667 percent to 2 percent per year upon completion of 25 years of service for Tier 5—for Tier 3 and 4 workers the 2 percent per year kicks in at 20 years of service);
- Full pension benefits cannot be attained until age 65 (today this limit is set at 62 for Tier 5, and 55 years of age with 30 years of service for Tier 3 and 4);



- Final average salary (FAS) changes include;
  - a 5 year average (today, most public employees' FAS is based on a 3-year average),
  - no longer include any overtime pay for the determination of an annual pension (today, overtime not exceeding \$15,000 can be used in the calculation of FAS under Tier 5), and
  - no longer allow lump sum vacation pay, any form of termination pay and additional compensation paid in anticipation of retirement would be counted in FAS.
- Service credit for unused sick time would no longer be granted;
- 12 year vesting (currently 10 years for Tier 5, and 5 years for Tiers 3 and 4); and
- Reportable salary for a state employee, for purposes of calculating a pension could not exceed the Governor's annual salary (currently \$179,000)

Under these proposed reforms the long term expected new entrant contribution rate for employers to support public employee pension costs, based as a percent of salary, would be:

#### ***Balancing Employer and Employee Contributions***

	<b>Governor Cuomo's Tier 6</b>	<b>Tier 5 (Eff. 1/1/2010)</b>	<b>Tier 3 and 4</b>
<b>Annual Pension Contributions as a Percent of Salary</b>	<b>3.4 percent</b>	<b>8.8 percent</b>	<b>12.1 percent</b>
<b>Employer/Employee Share of Pension Contributions</b>	<b>36% employer / 64% employee</b>	<b>72% employer / 28% employee</b>	<b>90% employer / 10% employee</b>

The lower the contribution rate, the lower the cost for employers (and taxpayers) and the higher the expected contribution for employees. The pension contribution percentages for employers related to police and fire positions are nearly double the rates shown above as a percent of salary. The balance (proportionate share) to support annual pension contributions is presented in the second line of the above chart and it demonstrates how Tier 6 reforms proposed by Governor Cuomo would shift the balance of support from employer to employee.

In addition to these reforms NYSAC also supports:

- Providing an option for newly hired public sector employees to participate in a defined contribution retirement benefit rather than the current defined benefit pension.
  - A defined contribution option would provide significantly more stability in funding a pension benefit and eliminate the dramatic swings in annual contributions that result from the volatility of the stock market.

- A defined contribution option would also offer new employees more portability of their retirement account. The workforce of today is more mobile than in prior generations and people switch jobs and careers more often than in the past. Additionally, the State and local governments are fundamentally altering the way they deliver services to the public, whether it be new technologies that allow for a new and more efficient delivery platform or a new system for managing particular projects (one-time) or programs (ongoing service delivery). These new technologies and system approaches are often developed and implemented by workers with unique or highly technical skill sets that are in great demand. For these workers, they may find the most value in their careers by building a system and getting it ready and then moving on to the next project. In these instances a defined contribution model may be more appealing than a traditional defined benefit pension as there is no intention of staying in the same job long enough to become vested in the retirement system. The efficiencies, flexibility and stability that a defined contribution approach provides over a defined benefit model, has made defined contribution the retirement model of choice for the private sector.
- The availability of full pension benefits should also be applied commensurate to when social security benefits become available (up to 67 years of age for most workers today).
- Previous employees returning to public service should not be able to benefit from reinstatement of the previous tier.
- For local governments that opt to amortize a portion of their pension expenses they should be allowed to do so at zero interest or be allowed to access the bond market directly using their own credit experience. Many counties could borrow at lower rates than what are being offered by the State Comptroller under the current system.

## CONCLUSION

A healthy and affordable pension/retirement system is critically important to the State's economic environment, payments to state and local government pensioners exceed \$6 billion a year and provide stability for retirees and many communities. However, it is also critically important that we balance the important benefits the current pension system provides with affordability for the taxpayer (which is directly tied to the state's economic competitiveness overall).

The volatility of stock market returns is well known, the property taxpayer in New York is under duress and they are demanding relief (in the form of lower taxes, not just limiting the rate of growth in their property taxes) and the changing workforce will require more flexible employment benefit options in the future. This confirms the need for a restructuring of the current public pension system in New York that provides for a more affordable option for employers (taxpayers), provides more flexibility and portability for the workforce of the 21st century and appropriately balances risk between the employer, taxpayer and employee. Major pension reforms as proposed by the Governor and NYSAC should be a top legislative priority for the State Legislature in 2012.



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# Putting Kids First: Reforming the Early Intervention Program



New York State Association  
of Counties

**December 2011**



**Mary Pat Hancock**  
*President*

**Stephen J. Acquario**  
*Executive Director*





# PUTTING KIDS FIRST: REFORMING THE EARLY INTERVENTION PROGRAM

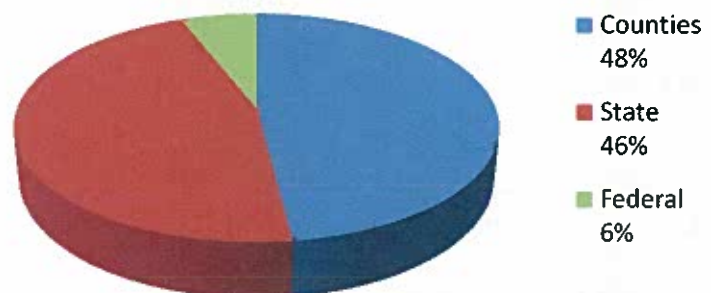
## NEW YORK'S EARLY INTERVENTION (EI) PROGRAM

New York State's Early Intervention Program is established in Article 25 of the Public Health Law and has been in effect since July 1, 1993. Children under 3 years of age who have a confirmed disability or established developmental delay are eligible for services. New York State defines these disabilities or developmental delays in one or more of the following areas of development: physical, cognitive, communication, social-emotional, and/or adaptive. There is no income eligibility for families with children who need Early Intervention Program services.

## HOW EI IS FINANCED

Total expenditures in 2010 for the New York State Early Intervention Program were \$650 million, with counties spending close to \$330 million. By law, counties are mandated to bill insurance companies for EI services before seeking any other form of reimbursement.

**Total Program Expenditures  
\$650 Million in 2010  
(not including administration)**



## THE COUNTY ROLE

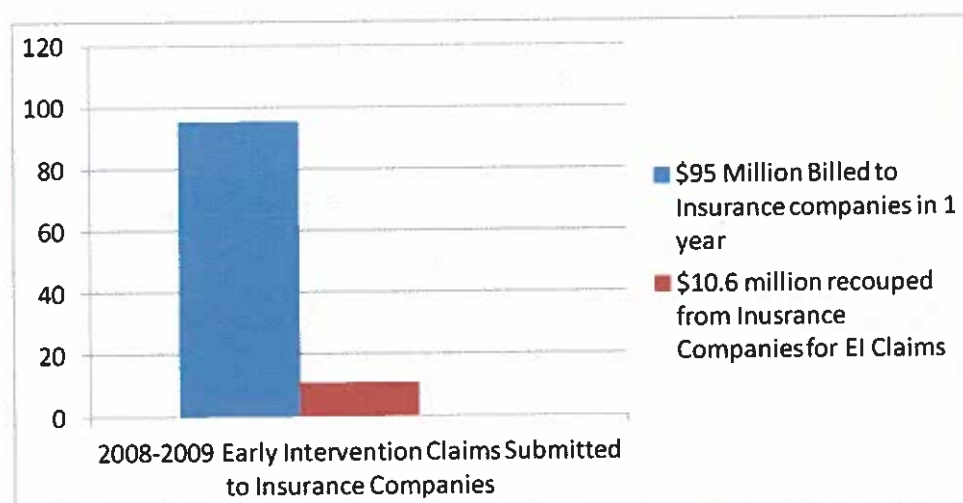
County Health Departments coordinate all Early Intervention services and payments, and counties are responsible for paying 100% of the cost of Early Intervention services in the first instance. By state statute these costs cannot be claimed until 9 months into the current school year, and as a result, these claims frequently remain unreimbursed for more than one year.

Despite the fact that nearly half of the children in the Early Intervention Program have private health insurance, insurance companies refuse to pay for these services. Counties (and the City of New York) are billing more than ever before and in amounts exceeding the amounts billed to Medicaid, but the percentage of recoupment remains low.

In 2008, more than 2 million claims were submitted by counties to private health insurance companies, and 85% of them were denied. The most recent data shows a total of approximately \$95.5 million was billed to commercial insurers and only \$10.6 million was recouped the same 14 percent collection rate as in 2000.

Claims are denied for many reasons as insurance companies assert that Early Intervention services are not considered health-based, they are developmental, and therefore should not be covered by health insurance.

The collections rates barely cover the costs incurred by counties to bill commercial insurance companies. In fact, when the costs of the services and billing are considered together, the return is 13 cents for every 1 dollar spent by counties overall.



## RECOMMENDATIONS FOR REFORM

Chapter 406 of the Laws of 2011 was enacted to start the process for 3rd party insurance responsibility. Unfortunately, the law does not go far enough to ensure that private insurance companies, not property taxpayers, pay for the medically necessary services for disabled infants and toddlers. At an annual aggregate cost of \$185 million to property taxpayers, the Early Intervention program is one of nine major State mandates that consume 90 percent of the county property tax levy statewide.

In 2011, Governor Andrew Cuomo introduced legislation sponsored by Senator Patrick Gallivan (S.5175 ), which would have reformed this program to ensure that third party health insurers pay for Early Intervention services that are medically necessary. To protect local taxpayers, NYSAC urges swift passage of this legislation.



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