



March 12, 2020

NYCOM staff continue to focus their attention on the State Budget which is due to be adopted on April 1. The Senate and Assembly will release their one-house budgets next week at which time we will have a much better understanding of how things will play out with respect to our priorities.

Based on what we are being told in discussions with legislators, it sounds like infrastructure funding is a priority for both houses. The legalization of cannabis and e-bikes/e-scooters also continue to be in the mix, as do amendments to the criminal justice reforms.

NYCOM continues to strongly oppose the proposals related to the siting of small wireless facilities and renewable energy projects due to their lack of local input and their infringement on municipal home rule authority.

Specific Proposals in the Governor's Executive Budget

AIM Funding – The Executive Budget makes no changes to the amount of AIM funding and the associated AIM-related payments that certain villages and towns receive from county sales tax revenues. There is language, however, that would clarify and facilitate the process for making the necessary AIM-related payments in both Erie and Nassau counties.

- ***Anticipated Legislative Response:*** Unfortunately there has been little talk of increasing AIM funding, although there is a possibility we could see something in the Senate one-house budget.

Water and Sewer Infrastructure Funding – An additional \$500 million would be provided for drinking water and wastewater infrastructure as well as water quality protection. This would be in addition to the \$3 billion that has already been allocated as part of the Clean Water Infrastructure Act that was created in 2017-18. NYCOM supports the increase in funding but would like to have each municipality receive its own allocation, similar to the CHIPS program.

- ***Anticipated Legislative Response:*** We believe both houses will support additional funding for water and sewer infrastructure.

Transportation Funding – CHIPS funding would remain at \$438 million but the \$65 million in Extreme Winter Recovery (EWR) funding is not continued under the Executive Budget. The Budget includes \$100 million for PAVE-NY and BRIDGE-NY. Both programs were due to expire at the end of the current fiscal year. In addition, at NYCOM's request the Budget would increase the CHIPS bidding-out threshold from \$250,000 to \$750,000, allowing municipalities the option to perform any projects at or under the \$750,000 threshold with their own workforce rather than bidding out the contract competitively.

- ***Anticipated Legislative Response:*** We believe the Senate will increase CHIPS funding, as well as PAVE-NY and BRIDGE-NY. The Assembly may include the \$65 million in Extreme Winter Recovery money.

Small Wireless Facilities Deployment – The Executive Budget would establish uniform procedures affecting the siting of small wireless facilities and further restrict local authority over siting decisions, fees, and the ability to hold wireless companies responsible for infrastructure installed in the municipal right-of-way (ROW). This language would both codify into State law many of the regulations already adopted by the Federal Communications Commission (FCC) in 2018 and exceed the minimum requirements implemented at the federal level. Notably, this bill would prevent municipalities from imposing meaningful indemnification clauses in ROW occupancy agreements and would limit the bonding requirements a local government may impose on a wireless provider when installing facilities in the municipal ROW. This legislation would support the industry’s effort to eliminate all local oversight of wireless siting decisions in municipally owned and controlled rights-of-way. Consequently, NYCOM is strongly opposed to this proposal.

- ***Anticipated Legislative Response:*** Based on what we are hearing, we do not believe this proposal will be included in either the Senate or Assembly one-house budgets but it may be something that is addressed after the State Budget is adopted.

Renewable Energy Siting – The Executive Budget would establish a new Office of Renewable Energy Siting to review siting applications for renewable energy projects whose capacities exceed 10 megawatts. The use of this new “fast track” siting process will likely bypass local environmental concerns and the legitimate zoning considerations adopted by local governments. Specifically, this legislation would: replace the Siting Board and the Article 10 siting review process for renewable energy facilities exceeding 10 megawatts in capacity and would deem a renewable energy project granted if not acted on within one year of a completed application; eliminate local zoning authority and the review of local environmental and economic impacts relating in siting renewable energy power plants, storage facilities, and transmission lines; and significantly constrain local governments’ ability to negotiate PILOTs and obtain an equitable return for hosting renewable energy facilities. NYCOM is strongly opposed to this proposal.

- ***Anticipated Legislative Response:*** It appears that neither house is inclined to include this initiative in their one-house budgets due to the fact that it has no financial impact on the state budget. However, this is a significant priority for the Governor so we believe this will be something he will continue to push after the State Budget is adopted.

Criminal Justice Reforms – While the Governor did not advance specific proposals to address widespread concerns regarding last year’s Criminal Justice Reforms, he noted that the reform is an ongoing process and that the Executive and the Legislature need to include in the adopted State Budget a response to relevant facts pertaining to implementation problems. There is \$2 million in funding to assist with the new discovery requirements included in the Executive Budget.

- ***Anticipated Legislative Response:*** It is difficult to say what the Legislature will do on this issue but the Senate clearly has expressed an interest in making changes. The Assembly has been less committed but we do believe both houses understand the need for some fixes to the initial discovery reforms.

Legalization of Recreational Cannabis – The Executive Budget would legalize recreational marijuana for those 21 years of age and older. County governments and cities with a population over 100,000 would have the authority to opt out which would allow them to prohibit any establishment or operation involving the cultivation, processing, distribution and sale of adult-use

cannabis within their jurisdiction. However, recreational cannabis would remain legal in their jurisdiction. In addition, the proposed law expressly preserves the authority for any city, village, county or town to regulate the hours of operation and location of licensed adult-use cannabis retail dispensaries, provided such regulations do not make the operation of such licensed retail dispensaries unreasonably impracticable.

Marijuana sold by wholesalers to retailers would be subject to three different taxes. No city (excluding New York City as a county), village or town would receive any of the associated tax revenue. (The revenue from two of those taxes would be deposited in the New York State Cannabis Revenue Fund and used for cannabis-related purposes. The revenue from the third tax would be collected in trust for and on account of the county in which the retail dispensary is located.)

NYCOM supports giving cities and villages, regardless of population size, the ability to opt-out of allowing cultivators, processors, distributors, dispensaries, and on-site consumption establishments to operate within their jurisdictions, as well as revenue sharing for all local governments.

- ***Anticipated Legislative Response:*** This is an issue that is being negotiated at the leadership level so the details are uncertain but due to the complexity of this issue, we believe this may be something that is addressed after the State Budget is adopted.

E-Scooter and E-Bicycles – The Executive Budget would legalize the operation of e-bikes and e-scooters for individuals 16 years of age and older. These vehicles would only be permitted on roads with speed limits of 30 mph or less and bike lanes. E-bikes could not be operated in excess of 20 mph nor operated on sidewalks. E-scooters would be limited to no more than 15 miles per hour and could also not be used on sidewalks. Cities, villages, counties and towns would have the ability to further regulate e-bike speeds as well as time, place, and manner of e-bike and e-scooter operation, including requiring headwear and visible reflective clothing, and limiting and prohibiting e-bike and e-scooter use in specific areas or the municipality entirely.

NYCOM is seeking elimination of the ability for counties to opt-out, which if left in the bill would prevent cities, villages and towns within such county to decide whether they want to allow for the operation of e-bikes and e-scooters within their communities. We are also in favor of giving municipalities the flexibility to allow for the parking of these vehicles on sidewalks if desired.

- ***Anticipated Legislative Response:*** Based on everything we are hearing, this proposal will be part of the adopted State Budget and the county opt-out will be eliminated so that cities, villages and towns will have the ability to decide whether they want to allow e-bikes/e-scooters in their communities.

Prevailing Wage – Effective July 1, 2021, the Executive Budget would require prevailing wage to be paid on private construction projects with total costs that exceed \$5 million and that are paid for with at least 30 percent public funds. Certain projects, including those related to affordable housing, historic preservation and renewable energy, would be exempt. The Budget would also establish a Public Subsidy Board comprised of eleven gubernatorial appointees which would be empowered to examine and make any necessary adjustments to thresholds included in the

language, as well as determinations related to its applicability to specific projects or entire categories of projects. NYCOM has concerns about the impact of these provisions on certain development projects in cities and villages, including the broad authority given to the Public Subsidy Board.

- ***Anticipated Legislative Response:*** Both houses appear to be interested in doing something on prevailing wage but the details are unclear as is whether it will be done as part of the adopted State Budget.

Look for NYCOM's Advocacy Update next week for more information on the Senate and Assembly one-house budgets along with other State Budget-related developments.