



# 2019 Proposed Legislative Program

Submitted for consideration by the Association of Towns Resolutions Committee

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First Vice President, Association of Towns, Chair of the Resolutions Committee*

1. Strengthening State Relations through Mandate Relief and Revenue Sharing
2. Preserve and Strengthen Home Rule
3. Continue Town-Initiated Intermunicipal and Shared Service Agreements
4. Relief from Recycling Mandates
5. Increase Justice Court Funding
6. State Support for Local Highway Administration
7. Fund Local Water, Sewer and Stormwater Infrastructure
8. Increase the Number of DEC Forest Rangers
9. Oppose State Takeover of Utility Property on Private Rights-of-Way
10. Eliminate the "Dark Store Theory" as a Valuation Method to Reduce Real Property Tax Assessments
11. Support Local Hotel Occupancy Taxes
12. Sales Tax Distribution
13. Retiree Capped Earnings
14. Publication of Legal Notices
15. Restore the Full SALT and Mortgage Interest Deduction
16. Reform Inequities in the Property Tax Cap Formula
17. Cell Phone Service in the Adirondacks
18. Support Funding for Rural Broadband Deployment while Preserving Local Authority
19. Authorize an Optional Town Gross Receipts Tax (GRT)

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## Resolution No. 2

### Preserve and Strengthen Home Rule

WHEREAS, the New York State Constitution grants broad home rule powers to local governments and places restrictions on the state Legislature in order to preserve these powers; and

WHEREAS, home rule powers encompass a wide range of subjects, including but not limited to: the power to adopt, amend and repeal local laws in the exercise of its functions, powers and duties; the power to share services and act cooperatively with other local governments; the power to acquire real and personal property for its corporate purposes; the power to establish recreational facilities; the power to dispose of its real and personal property; the power to levy and collect rents and/or penalties in a city, village or town; the power to adopt, amend and repeal zoning regulations; and the power to perform comprehensive or other planning work relating to its jurisdiction; and

WHEREAS, under Municipal Home Rule Law and the Statute of Local Governments, a local government's home rule powers must be liberally construed; and

WHEREAS, the exercise of home rule powers allows local governments to meet the unique and diverse needs of local residents while also fostering citizen participation and grassroots involvement in government; and

WHEREAS, New York's diverse communities are best served by maintaining the principles of home rule, including those set forth in the state Constitution, Local Government Bill of Rights, Statute of Local Governments and the Municipal Home Rule Law; **NOW THEREFORE BE IT**

**RESOLVED, that the Association of Towns calls upon the Governor and the Legislature to preserve and strengthen home rule; and BE IT FURTHER**

**RESOLVED, that the Association of Towns strongly opposes any state initiative that ultimately weakens or eliminates New York's long-standing tradition of home rule and local government authority.**

#### Background

*This resolution was part of the 2018 Legislative Program.*

Home rule can be described as a method by which a state government can transfer a portion of its governmental powers to a local government, providing localities with autonomy in the management of their own affairs, the objective being a more equitable and efficient allocation of duties and rights between the state and its local governments. The evolution of home rule occurred over the span of several decades. Cities, counties and some villages all received home rule powers before towns. Towns received home rule powers with the adoption of the 1963/1964 Constitutional Amendments. Unfortunately, through a series of court cases and legislative enactments, the state has weakened local home rule powers by finding local governments are pre-empted by the state regarding areas of local concern. This resolution seeks to preserve and strengthen home rule by affording town governments the authority needed to serve New Yorkers who live and work in towns.

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WHEREAS, these restrictive policies have increased the cost of disposal of recycled materials to municipalities to now approach tipping fees for regular trash; and

WHEREAS, these world events are causing unsustainable cost increases of recycling material disposal for municipalities; and

WHEREAS, the worldwide commodity situation for recycled materials is unlikely to change in the short-term; and

WHEREAS, the disposal of recycled materials previously provided municipalities a small revenue stream, but current events now make their disposal a growing cost to municipalities; and

WHEREAS, raising tip fees and other costs associated with recycling often have detrimental environmental effects such as "dumping" on both private and public lands; and

WHEREAS, towns recognize that recycling is an important component of environmental stewardship, **NOW THEREFORE BE IT**

**RESOLVED, that the Association of towns requests the Governor and any relevant executive departments to re-evaluate current laws, policies and administrative interpretations in order to relieve the added and growing costs of processing and disposal of recycling materials; and BE IT FURTHER**

**RESOLVED, that the Association of Towns requests that New York State modify mandates relating to recycling and provide municipalities with a subsidy to, at a minimum, offset the current losses being incurred by municipalities who properly dispose of recycling materials.**

## Background

*This is a new resolution suggested by the board of supervisors in Schoharie County*

There are several reasons for this skyrocketing cost, including a limited market for recyclables. The Chinese market, the largest market for recyclables in the world, has put a three-month moratorium on acceptance of recyclables from the United States because USA recycling is too dirty. Contamination restrictions for the Chinese market have been reduced to 0.03 percent from 0.05 percent. Contaminated recyclables also slow down the process of recycling separation, which increases costs. This has caused single-stream recyclers to continue stockpiling recyclables while this situation goes on, also increasing the cost of disposal.

This resolution was requested by the board of supervisors in Schoharie County to address the brewing crisis in municipal recycling. General Municipal Law, § 120-aa (2) (a) requires recycling where "economic markets for alternate uses exist." The term "economic markets" refers to "instances in which the full avoided costs of proper collection, transportation and disposal of source-separated materials are equal to or greater than the cost of collection, transportation and sale of said material less the amount received from the sale of said material," (General Municipal Law, § 120-aa (2) (a)). The economic markets for recycling are disappearing, and the cost of disposing of recyclables is rising.

Local governments considering suspending their recycling programs need to work with the Department of En-

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to a town or village for the services of its justice court. The legislative basis for enacting §99-L of the General Municipal Law was to provide that those who violated the law and were responsible for the financial burden of operating the local courts ought to bear some of that financial burden. Inflation and the resulting higher operating costs of local courts require rethinking the amount of court costs that ought to be paid by those defendants who appear before the court, and not the real property owner, who bears the greatest financial burden of maintaining local government costs, including the costs of police protection and court maintenance. Towns are overdue for an increase in fees for operational expenses in that towns have not seen an increase in GML fees since 1997, when the current reimbursement rate of \$15 was set. Legislation was introduced but not enacted in 2007 (A6647/S3329); if enacted, it would have increased from \$15 to \$20, the fee payable to a town or village for criminal actions, moving violation proceedings, license suspension or revocation orders, and examination of any deposition and information and the issuance of a search warrant by a justice court and increased the justice court copy fee from 25 cents to 35 cents per folio of 100 words. In addition, the fees charged for small claims court applications have not been increased since 1996, and the reimbursement fees for translation services have not been increased in more than four decades.

**OSC Justice Court Fund Report:** [www.osc.state.ny.us/localgov/pubs/research/justicecourtreport2010.pdf](http://www.osc.state.ny.us/localgov/pubs/research/justicecourtreport2010.pdf)

## Resolution No. 6

### State Support for Local Highway Administration

WHEREAS, local highways and bridges make up 85 percent of our state's highway system; and

WHEREAS, recent local road system studies continue to identify a multi-billion dollar shortfall in funding for local highways and bridges; and

WHEREAS, upgrading the state's 90,000 miles of county and town roads to meet the American Association of State Highway Transportation Officials (AASHTO) minimum standards would cost more than \$9.7 billion; and

WHEREAS, there is a need to statutorily empower local highway superintendents, town boards and engineering professionals to make decisions regarding the maintenance, reconstruction and construction of local low-volume and minimum maintenance roads; and

WHEREAS, the New York State Local Road Classification Task Force developed guidelines for a design process for rehabilitation projects on low-traffic roads, including recommendations for pavement width, bridge width, roadside clear zones and minimum maintenance standards for rural roads that access and protect farms, forests and recreational land; and

WHEREAS, towns are limited in the amount that they can annually levy to fund highway equipment purchases without engaging in the expense of a referendum; **NOW THEREFORE BE IT**

**RESOLVED, that the Association of Towns calls upon the Governor and Legislature to increase the base funding for the Consolidated Highway Improvement Program (CHIPS), PAVE-NY and BridgeNY; and BE IT FURTHER**

**RESOLVED, that the Association of Towns calls upon the Governor and Legislature to authorize localities to make local road classifications as recommended by the NYS Local Road Classification Task Force, which**

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bridges [www.osc.state.ny.us/localgov/pubs/infrastructure2014.pdf](http://www.osc.state.ny.us/localgov/pubs/infrastructure2014.pdf).

## Statutory Support for Local Low-Volume and Minimum Maintenance Roads

The Local Roads Classification Task Force and the Local Roads Research Coordination Council were created to look at ways to lower costs for rural roads. Several additional councils and organizations have pushed for legislation to formally codify the authority and procedure to designate low-volume and minimum maintenance roads, to no avail (see e.g. A418 Gunther (MS); same as S2537 Griffo [2018]). Meanwhile, organizations such as the Legislative Commission on Rural Resources, the Tug Hill Commission and Cornell Local Roads offer sample local laws, training and other guidance in the matter.

In the absence of express state statutory authority, many towns have utilized their home rule authority and adopted local road standards by local law. The need for state legislation has become more important as some lower courts have found that locally adopted road standards that include limits on snowplowing services on minimum maintenance roads is inconsistent with seasonal limited-use road designations under Highway Law, §205-c (*Weikel vs. Town of West Turn et al* Index No. CA2015-0411; RJI No. 524-15-0207 Supreme Court Lewis County (March 24 2016) reversed on statute of limitations grounds 162 A.D.3d 1706 (4<sup>th</sup> Dept. 2018).

## Additional Resources

**Guidelines for Rural Town and County Roads:** <https://cornell.app.box.com/v/clrp-pb-mgrtcr>

**Tug Hill Commission:** <https://www.tughill.org/wp-content/uploads/2011/09/Questions-and-Ans-Low-Volume-Road-Design-03-14.pdf>

**Cornell Local Roads:** <https://cornell.app.box.com/v/clrp-pb-hslvrnys>

## Increasing Levy Cap on Equipment Funding

Highway Law, §271(3)(a)(4) limits the amount of money that a town may annually levy and collect to fund purchases of stone crushers, power rollers, motor trucks, scarifiers, concrete mixers, traction engines or road machines for grading and scraping, equipment, tools and other implements. The limit of \$60,000 was set in the 1950s. Although some towns have higher annual thresholds through special state legislation, the \$60,000 limit is well outdated, considering equipment that is vital to public safety, such as a snow blow truck, now costs more than \$200,000. Increasing the statutory threshold to be more consistent with the current cost of equipment will give towns the necessary flexibility to manage their equipment needs and budgets. Currently, to seek an increase over the \$60,000 limit, the town board needs a referendum or an amendment to Highway Law, §271.

## Resolution No. 7

### Fund Local Water, Sewer and Stormwater Infrastructure

WHEREAS, communities within New York State maintain extensive networks of intertwined infrastructure critical to public health and our state and local economies; and

WHEREAS, many municipalities are responsible for water systems, sewer systems, stormwater facilities and other infrastructure constructed decades ago under earlier, and possibly outdated, regulatory standards; and

WHEREAS, these systems are owned and maintained at various levels of government and require regular main-

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## Resolution No. 8

### Increase the Number of Department of Environmental Conservation Forest Rangers

WHEREAS, NYS forest rangers have provided care, custody and control of the Forest Preserve and all DEC-managed lands throughout the state since 1885, protecting the valuable natural resources and the people who recreate there; and

WHEREAS, forest rangers are unparalleled stewards of the land who are police officers, wild land firefighters and wilderness first responders that patrol these lands year-round; and

WHEREAS, the addition of more than 1 million acres of DEC-managed lands the last several decades without staffing increases has caused the ratio of DEC-managed lands per ranger to grow from one ranger per 28,516 acres in 1970 to one ranger per 53,752 acres today; and

WHEREAS, the dramatic increase in recreational use of state lands has led to a corresponding increase in the number of search and rescue operations. In both 2015 and 2016, forest rangers participated in more than 300 incidents annually, numbers that had not been met in the rangers' previous 130 years of existence; and

WHEREAS, communities rely heavily on tourism associated with state land recreation which, gratefully, has been well-promoted by this administration; and

WHEREAS, forest rangers are essential to providing a safe and positive recreational experience for tourists using state land; and

WHEREAS, the current level of forest ranger staffing, 137 statewide including supervisors, is not adequate to fulfill their unique mission given the amount of land they patrol and the number of incidents to which they respond; and

WHEREAS, the PBA of NYS has proposed increasing the number of forest rangers staffing to 175; and

WHEREAS, the proposal by the PBA of NYS to increase forest ranger staffing has wide public and bipartisan support from local governments, business groups, environmental groups and outdoor recreation clubs for the simple reason that it protects the people from the land and the land from the people; and

WHEREAS, this proposal represents the best solution to address the increase in public lands and its usage rates; **NOW THEREFORE BE IT**

**RESOLVED, that the Association of Towns supports increasing the number of forest rangers to 175 statewide, which is deemed critically important to the state protection of state land, the environment and the people of the State of New York.**

## Background

***This is a new resolution that was submitted by the Adirondack Association of Towns and Villages.***

The Police Benevolent Association of New York State, which is the union that represents forest rangers, believes that there is a need to increase the number of state forest rangers due to the search and rescue operations necessitated by the increased number of visitors to the Adirondacks and the increases in acreage of state-owned

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2018. While the program was repealed, the law repealing the program directed the state to evaluate the economic, policy and legal objectives that would be served through a statewide public utility central assessment program.

The Association of Towns opposes this directive, as assessing is an important town function that should remain at the local level.

## Resolution No. 10

### Eliminate the "Dark Store Theory" as a Valuation Method to Reduce Real Property Tax Assessments

WHEREAS, New York State Real Property Tax Law Section 305 requires real property to be assessed at a uniform percentage of value in each assessing unit; and

WHEREAS, the owners of real property in New York State are assessed on their property as it existed on the applicable taxable status date; and

WHEREAS, assessors use three approaches in valuing real property including the cost approach, the income approach and the sales approach; and

WHEREAS, a fair and uniform indicator of property value to assist in assessment is the sale of a similar-use, comparable property; and

WHEREAS, there is a national trend to use the "Dark Store Theory" when assessing "big box" real property parcels; and

WHEREAS, the "Dark Store Theory" relies on the use of shuttered, deed-restricted and abandoned properties that are in no way similar to lighted stores as comparables; and

WHEREAS, the real estate tax revenue that would have been generated from a "Dark Store" that was properly assessed will be shifted and redistributed to the remaining taxpayers within the jurisdiction, increasing their tax burden; and

WHEREAS, big box retailers require local governments to extend public services and infrastructure and should be assessed accordingly; **NOW THEREFORE BE IT**

**RESOLVED**, that the Association of Towns calls upon the Governor and state Legislature to adopt legislation prohibiting the use of the "Dark Store Theory" as a valuation method in real property assessment.

## Background

*This resolution was part of the 2018 Legislative Program.*

In recent years, a trend has proliferated among big box stores to challenge their real property assessment using the "dark store theory." That is, retailers such as Lowe's and Target have challenged their assessment on the grounds that the property's value should be taxed at the rate of comparable properties that include vacant and abandoned lots that formerly housed big box stores but have since gone "dark." Essentially, there are few com-

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some interest in the issue and included a program creating a uniform hotel/motel tax program in its one-house budget bill before, but it was not included in the final state budget.

## Resolution No. 12

### Sales Tax Distribution

WHEREAS, sales tax collection represents an important source of revenue that many towns use to help defray the rising costs of providing services or property taxes at the town or county level; and

WHEREAS, counties are authorized by Article 29 of the New York State Tax Law to impose a tax on the sale of certain goods; and

WHEREAS, a county legislature has the option of using all or a portion of its sales tax revenues solely for county or education purposes, or it may apportion some between its towns and cities (Tax Law, §1262); and

WHEREAS, a county legislature is additionally authorized to make an agreement with any city or cities in the county to allocate a specific portion of these revenues to such city or cities; and

WHEREAS, cities have the right to pre-empt application of the county sales tax and impose their own local sales tax; and

WHEREAS, towns do not yet enjoy the right to levy their own local sales tax, pre-empt the in-town application of the county sales tax or require the county to negotiate a sales tax allocation agreement; and

WHEREAS, local sales taxes are generally levied at the county level and sales tax proceeds are distributed to other units of government within county boundaries in accordance with local sharing agreements entered into at the discretion of the county; and

WHEREAS, in counties where the county shares sales tax with towns, towns can receive their sales tax distribution in one of three ways: (1) as an offset to reduce county property taxes levied in a town; (2) in cash; or (3) a combination of the two; and

WHEREAS, the state has imposed a real property tax levy cap on all municipalities, effectively limiting the ability of the towns and villages to keep pace with the rising costs of employee health insurance, retirement system costs and other expenses and increasing the need for towns to rely on alternative revenue sources such as sales taxes; **NOW THEREFORE BE IT**

**RESOLVED**, that the Association of Towns calls upon the Governor and the state Legislature to amend the New York State Tax Law to require county governments governed by separately elected legislators to share sales tax revenue with towns and to negotiate sales tax allocation formulas with towns; and **BE IT FURTHER**

**RESOLVED**, that non-negotiated changes to a county sales tax allocation formula be subject to a permissive referendum.

## Background

*This resolution was part of the 2018 Legislative Program.*

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State § 212). The salary limitations set forth in § 212 were increased annually between 1996 and 2004 to account for inflation, but the Legislature has not increased the cap in several years despite bills being introduced on a near-annual basis (see S3576-B [2017]; S2447 [2016]; S02447-D [2015]; S5090 [2014]).

## Resolution No. 14

### Publication of Legal Notices

WHEREAS, an informed and engaged electorate is important to the governing process; and

WHEREAS, the electorate is notified of many local government actions via publication of legal notices in a paid daily or weekly newspaper as defined by Public Officers Law §70-a and General Construction Law, §60 (a); and

WHEREAS, studies show a decline in paid local daily and weekly newspaper readership; and

WHEREAS, New Yorkers are increasingly turning to alternative sources of news and information, such as the internet or free community newspapers; and

WHEREAS, the intent of required public notice is to increase the likelihood that citizens are well-informed regarding local government actions, finances and plans; **NOW THEREFORE BE IT**

**RESOLVED, that the Association of Towns calls upon the Governor and the Legislature to amend the General Construction Law to allow publications having a widespread though unpaid circulation within the town to be considered newspapers and to permit towns and other local governments to place legal notices in these local publications; and BE IT FURTHER**

**RESOLVED, that the Association of Towns supports legislation allowing optional alternative media for publication of legal notices in order to improve citizen participation in and awareness of town programs and expenses.**

### Background

*This resolution was part of the 2018 Legislative Program.*

State law requires publication of legal notices in a newspaper and establishes specific rules regarding what publications qualify as a "newspaper" for purposes of legal notice (General Construction Law, §60(a) and Public Officers Law, §70-a). Specifically, in order to be considered a "newspaper," a publication must: (1) be in general circulation; (2) be established and ordinarily printed and distributed at least weekly for at least one year; (3) contain news, editorials and other matters of current interest; (4) have a paid circulation; and (5) be entered as second-class mail matter (Op. St. Compt. No. 94-9; Op. Atty. Gen. ¶ No. 90-49). The rates charged by "newspapers" are set forth in Public Officers Law, §70-a (1).

Due to the narrow definition of "newspaper," alternative publications, such as free weeklies or internet-based publications, are excluded from use for purposes of legal notice. Expanding the definition of a "newspaper" to include other types of publications could provide more notice to the public. Moreover, changes in the statutory rates could reduce the publication costs of public notices. In addition to expanding the definition of what publications qualify as newspapers for purposes of public notices and lowering the statutory publication rates, tax-

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a high tax burden.

Towns provide a significant number of essential services, including police protection, critical infrastructure improvements, emergency medical services, solid waste disposal, fire protection, refuse pickup and highway maintenance, among others. More often than not, the only avenue to raise revenue is through real property taxation. Limiting the ability to generate revenue through taxation by eliminating and modifying the SALT deduction will only further impede a local government's ability to provide cost-effective, essential services to its residents. Moreover, the SALT deduction encourages homeownership; the elimination of this essential tax break will likely have a chilling effect on homeownership in New York.

## Resolution No. 16

### Reform Inequities in the Property Tax Cap Formula

WHEREAS, the Property Tax Cap, which was designed to limit the property taxes levied by local governments to 2 percent or the rate of inflation, whichever is less, is in place until June 2020; and

WHEREAS, the actual Property Tax Cap levy amount has typically been below 2 percent for five consecutive years; and

WHEREAS, New York State governs how towns raise revenue, and property taxes are the primary source of revenue for towns; and

WHEREAS, other sources of revenue, such as state and federal aid, have remained stagnant while expenses continue to rise; and

WHEREAS, New York State has primarily provided real property tax relief through ad hoc property tax exemptions rather than comprehensive property tax reform, resulting in additional administrative and litigation costs and a tax shift rather than a tax reduction; **NOW THEREFORE BE IT**

**RESOLVED**, that the Association of Towns calls for tax cap program reforms, such as exemptions for expenditures that improve public safety, invest in local infrastructure, address emergencies, acquire and develop open space, result from capital improvements mandated by government agencies, consent orders, and invest in municipal infrastructure to enhance economic capacity and community development; and **BE IT FURTHER**

**RESOLVED**, that the Association of Towns calls on the state to examine and report on the property tax cap's impact on local government operations and infrastructure.

## Background

***This resolution was part of the 2018 Legislative Program.***

The Property Tax Cap (General Municipal Law, §3-c), which established a limit on the annual growth of property taxes levied by local governments and school districts to 2 percent or the rate of inflation, whichever is less, was adopted in 2011 and will expire in 2020. The allowable growth levy has been less than 2 percent for the last five years and has only recently hit 2 percent: ([www.osc.state.ny.us/localgov/realprop/pdf/inflation\\_allowable-](http://www.osc.state.ny.us/localgov/realprop/pdf/inflation_allowable-)

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"It's a major issue for tourists," Wolff said. "They come to the North Country and they want to be able to use their cell phones." Regardless of carrier, there are miles of dead zones in the Park.

Public safety is an additional concern. Dead zones mean that those in distress can't access help. Verizon did close the cell tower gap on the Northway in 2015 in part after a public and political outcry after a man died of hypothermia in his car in 2007 because neither he nor his wife could call for help, but dead zones remain. Lynch said it's possible that the new fiber infrastructure could help with cell phone service down the road. Wireless companies could use existing fiber networks to build shorter towers, which can lower their costs and enable them to place more towers. In the meantime, residents are at the mercy of the mobile phone companies. ATT spokesperson Brandy Bell-Truskey said ATT invested nearly \$1.3 billion in New York State wireless and wired networks from 2015 to 2017. While she would not provide the number of ATT towers in the Park or their location, she did say some of the improvements were in Lake George village and parts of the Northway. Rod Garrett, who lives in Saranac Lake and is a telecommuting senior economist for a company in Rome, New York, lives that cell phone frustration. "Without the internet, I couldn't work from here. It's that simple," he said, "but a cell phone is also important. A cell phone gives me the freedom to move around."

## Excerpt from *Federal grants to boost Adirondack cell coverage, economic development projects*

By Pete Demola, The Sun Community News

<https://www.suncommunitynews.com/articles/the-sun/federal-grants-to-boost-cell-coverage-workforce-development/>

JULY 26, 2018

### Cell Coverage

The Town of Inlet was awarded \$352,000 to construct a communications tower to provide cell coverage to Raquette Lake, Eagle Bay and Big Moose. Hamilton County Board of Supervisors Chairman Bill Farber said while the lack of modern communications was once alluring to city residents seeking to escape the grind, it's no longer a tenable concept. "The reality is the need for cell service in the Adirondacks is becoming more and more notable," Farber told The Sun. The lack of coverage puts businesses in the rural Hamilton County getaway at a competitive disadvantage, and entrepreneurs are reluctant to invest owing to an inability to connect with their target audience, create a social media presence or build a following, and for the inability to offer these services to guests and patrons, said the news release announcing the grant. Inlet is on the front lines of what Farber referred to as the "next big technology gap." The lack of coverage can also be a deal-breaker for visitors who rely on smartphones for work, or even for families whose children would revolt at being cut-off from modern technology during a family trip. Old Forge, located about 10 miles southwest, has ample cell coverage, and retailers have been fielding an increasing number of complaints from visitors about the patchy and non-existent service, Farber said. "The comments are getting more and more negative, and the economic impacts revolve around cell service," he said. And there's also the public safety issue, including the ability to call 911. With the grant funds announced, Inlet can now move forward in the permitting process with the property owner, with construction likely to begin next year. "This is something we're aggressive about," Farber said. "We will work with the town to make sure we move forward on this project."

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speed internet access and advanced telecommunications services for homes, commercial establishments, government, schools and community anchor institutions. In New York State, broadband service is primarily delivered via cable modem, fiber-optic cable, digital subscriber line (DSL), or through mobile wireless (3G/4G/5G/LTE). In fact, many service providers use a combination of wireline and wireless technologies to provide hybrid broadband service to their customers.

The state currently hosts a map of broadband deployment where you can view areas of the state that are served, underserved and unserved.

According to the NYS broadband office, \$1 billion in public-private investments have been secured to provide broadband access to more than 2.42 million locations statewide. To see the NYS Broadband Map, visit: <http://www.broadbandmap.ny.gov>

## Federal Programs and Funding

The National Association of Towns and Townships (NATaT) has been working on this issue in Washington. NATaT's legislative platform calls for federal funding while preserving local control over access to local rights-of-way and infrastructure. You can read more about NATaT's platform at: <http://www.natat.org/wp-content/uploads/2018/05/NATaT-Broadband-Priorities.pdf>. In addition, there is information on rural broadband advocacy and funding available on Broadband Connects America's website <http://www.broadbandconnectsamerica.com/> and through the U.S. Department of Agriculture <https://www.usda.gov/broadband>

## Pre-emption

The telecommunications industry has been advocating at the federal, state and local levels to gain quicker and cheaper access to municipal infrastructure for the rollout of 5G small cell technology by seeking both state and federal legislative/regulatory accommodations. While towns recognize the need to ensure access to current technology, local government officials are best suited to manage and value local infrastructure and to process siting applications in a fair and orderly manner. To date, federal and state legislation to pre-empt local authority regarding the access to municipal infrastructure and the manner in which siting applications are processed have not advanced. For example, the proposal in the governor's 2018-2019 Executive Budget to pre-empt local siting authority was not included in the enacted state budget. In addition, pre-emptive state legislation (A 7489/S.2042 2018) did not advance out of committee. At the federal level, we have been working with NATaT to monitor federal legislation and FCC regulations and guidance. Legislation has been introduced in the U.S. Senate to streamline the deployment of 5G small cell infrastructure (S.3157 STREAMLINE Small Cell Deployment Act -<https://www.congress.gov/bill/115th-congress/senate-bill/3157/text>). In May, Executive Director Gerry Geist met with Sen. Brian Schatz, regarding federal S.3157, which regulates the placement of telecommunications equipment within municipal rights-of-way and our concerns with the draft legislation that had been circulating with some troubling pre-emptive components. The meeting was productive; the legislation that was introduced (S.3157 STREAMLINE Small Cell Deployment Act) is more accommodating to local governments than originally envisioned, but still needs work to better address fees, shot clocks and general authority. Senator Schatz has indicated that he is open to ideas and welcomes a healthy debate on the issues. In October 2018, the Federal Communications Commission adopted a new order imposing time limits on the amount of time municipalities have to

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gross receipts taxes on the sales of utility services that originate and terminate within their jurisdictions. Chapter 321 of 1937 granted cities the authority to impose a 1 percent tax on the gross income of utilities operating in their jurisdiction. Chapter 591 of 1950 extended similar authority to villages. *For purposes of this tax, a utility is defined as "any person ... subject to the supervision of the state department of public service ... who sells gas, electricity, steam, water or refrigeration delivered through mains, pipes or wires ..."*

According to the New York State Conference of Mayors, approximately 360 villages and 61 cities currently impose the utility gross receipts tax. In 2010, cities received nearly \$50 million in revenue from this tax, while villages generated an estimated \$26 million.

Towns across New York State are now requesting the same authorization that cities and villages have received for generations. Three cities even have the ability to collect higher percentages (3 percent) than the original legislation authorized. We can point to the following reasons that the New York State Legislature and governor should support this:

1. In a home rule state such as New York, legislation authorizing towns to impose the GRT at their option is a classic example of local discretion and provides the town with the ability to collect this revenue while not mandating or compelling a town to collect it. This authorization to towns should be viewed as a strengthening step of home rule.
2. GRT is similar to the concept of the cable franchise agreement, where towns, cities and villages have an agreement with cable companies to utilize the municipal rights-of-way in exchange for compensation. It is common for franchise fees paid to cities and villages to exceed GRT revenue. Courts have ruled that the cable franchise fee is not a tax, but rather a cost of doing business. No other entity provides free rent to a utility company, and towns should not be treated any differently. Extending the same GRT authority that cities and villages possess to towns is a matter of equity and common business practice.
3. In the new "Tax Cap Era," both the governor and the comptroller advocate becoming less dependent on the property tax and broadening the tax base. The GRT is based on usage and is spread across utility users, rather than just property owners. This is a great example of revenue diversification and an equitable mechanism to finance public goods and services through all users.

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