The County Perspective

2019 Federal Priorities

New York State Association of Counties

Monday, March 4th, 2019

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For more information NYSAC policy positions, visit www.nysac.org or call 518-465-1473.
As the 116th Congress convenes in 2019 a key policy area that can garner bipartisan support is transportation and infrastructure investment. Numerous proposals have been floated to update and enhance the nation’s transportation and infrastructure systems, which all agree require significant investments if we are to maintain our economic and national security dominance. By many standards, our national infrastructure falls far behind many other developed countries, including our key economic competitors. New York’s counties support congressional efforts to enact a comprehensive, 21st century, transportation, and infrastructure investment and reform package.

Recommendations for the Counties of New York State

- **Preserve existing federal matching rates to the greatest degree possible under any new transportation package.** Locally-owned roads and bridges account for 87 percent of New York State’s 110,000 miles of roadways and 50 percent of the state’s 18,000 bridges. These local transportation systems are an essential component of our national transportation network that form the backbone of our economic, public safety and security assets. The maintenance and enhancement of these local systems depends on significant federal support. Counties do not support proposals that dramatically lower existing federal matching shares necessary to maintain our transportation and other infrastructure.

- **Provide an appropriate balance between federal grant support for transportation projects and public private partnerships.** While New York’s counties support public-private partnerships for project development, it is important to recognize that most projects that will attract private investment will gravitate toward mega-projects that draw mass ridership or extensive user fee opportunities. Under these circumstances, transportation projects in most of New York’s counties will not be able to attract private investment because they are not of sufficient scale. This would also be the case in most of the nation’s more than 3,000 counties. The use of the current federal grants model for areas that cannot attract private investment must be maintained to ensure that we invest appropriately in our transportation systems in the coming century.

- **Preserve the tax-exempt status of municipal bonds.** Tax-exempt municipal bonds are a critical tool for counties to facilitate the budgeting and financing of long-range investments in infrastructure. Without this tax exemption counties would pay more to raise capital, resulting in reduced spending on roads and bridges, decreased economic development, higher taxes or user fees.

- **Preserve and promote the long-term solvency of the Highway Trust Fund.** Congress must consider an “all of the above” approach to ensure the solvency of the Highway Trust fund including: public private partnerships (where appropriate); infrastructure banks; and user fees that keep pace with inflation, technology advancements and construction costs.

- **Reform the regulatory process to speed the construction of transportation projects that utilize federal funding.** The current federal regulatory process for environmental review and other requirements can add years to the completion time, and significant costs for essential local and regional transportation projects. New York counties support proposals that will shorten this approval and review time including a single point of contact for federal project review and approval, and one environmental review, for a green light on construction.
Counties and local governments play a central role in maintaining, building and ensuring a safe and secure transportation system.

Locally-owned roads and bridges account for 87 percent of New York State’s 110,000 miles of roadways and 50 percent of the state’s 18,000 bridges. These locally owned roads and bridges are aging and deteriorating at a rapid rate as local governments struggle to find adequate funding for their maintenance and replacement.

The ability of counties and other municipalities to create and maintain a safe and efficient infrastructure network is necessary for trade, economic development and revitalization, job creation and retention, schools, agriculture, health and hospital facilities and emergency responders, as well as the general traveling public. Strong and efficient regional transportation and infrastructure systems support broad national goals and contribute to the nation’s overall GDP, health, safety and security. This is why increased federal funding for local transportation and infrastructure is so vital, and why this issue has remained one of NYSAC’s top federal priorities.

In February 2018, President Trump introduced a $1.5 trillion infrastructure plan. This plan would have effectively stripped most federal funding for transportation projects from New York’s local governments. The plan relied too heavily on private sector and local taxpayer financing to support regional transportation projects that form the backbone of the nation’s transportation network. The plan proposed changing the formula on how infrastructure projects are funded from the current 80% (federal)-20% (local) match to 80% (local)-20% (federal) match. This would have shifted the funding burden from the federal government to the state and local governments a burden most local governments, and taxpayers could not financially support.

The American Society of Civil Engineers 2017 Infrastructure Report provided a D+ grade to the state of our nation’s overall infrastructure including roads, bridges, mass transit, water, energy, dams, levees, among others. The report is developed and updated every 4 years and the nation has failed to improve the overall grade for more than 20 years. The lack of investment inhibits our ability to compete economically, threatens the safety of the public, and weakens our national security. We can no longer kick the can down the road on infrastructure investment and the federal government is best situated to take the lead on implementation.

For more information on the NYSAC position regarding this issue, visit www.nysac.org or call 518-465-1473.
Nearly three dozen states have legalized medical marijuana or the recreational use of marijuana for adults. New York State lawmakers are expected to consider the legalization of recreational marijuana during the 2019 Legislative Session. Legalization is anticipated to have implications for public health, public safety, criminal justice, the economy, and even the environment. Because marijuana is illegal under federal law, it is a cash-heavy industry. This makes “cannabusinesses” a target for internal and external theft and hinders its development as a regulated and accepted business—if a state so chooses to legalize the industry within its borders.

**Recommendations for the Counties of New York State**

Because of the disconnect between federal and state laws, and the expectation that New York State will soon legalize the recreational use of marijuana, New York counties support the enactment of legalization like the Strengthening the Tenth Amendment Through Entrusting States (STATES) Act and the Secure and Fair Enforcement (SAFE) Banking Act to ensure any legalization of marijuana in New York is done under a process that facilitates a regulated and safe environment that balances public health and safety concerns while supporting economic development opportunities.

**Summary of the STATES Act**

The Strengthening the Tenth Amendment Through Entrusting States (STATES) Act, introduced by Senator Elizabeth Warren (D-Massachusetts) and Senator Cory Gardner (R-Colorado), ensures that each state has the right to determine for itself the best approach to marijuana within its borders. To address financial issues caused by federal prohibition, the bill clearly states that compliant transactions are not trafficking and do not result in proceeds of an unlawful transaction. The bill also extends these protections to Washington D.C, U.S. territories, and federally recognized tribes, and contains guardrails to ensure that states, territories, and tribes regulating marijuana do so in a manner that is safe and respectful of the impacts on their neighbors.

The bill amends the Controlled Substances Act (21 U.S.C. § 801 et seq.) (CSA) so that—as long as states and tribes comply with a few basic protections—its provisions no longer apply to any person acting in compliance with State or tribal laws relating to the manufacture, production, possession, distribution, dispensation, administration, or delivery of marijuana. It does not alter CSA Section 417 (prohibition on endangering human life while manufacturing a controlled substance) and maintains the prohibition on employing persons under age 18 in marijuana operations, two federal requirements with which states, territories, and tribes must continue to comply. The bill does not allow for the distribution or sale of marijuana to persons under the age of 21 (Section 418) other than for medical purposes. It also prohibits the distribution of marijuana at transportation safety facilities such as rest areas and truck stops (Section 409).

**Summary of the SAFE Act**

The Secure and Fair Enforcement (SAFE) Banking Act would solve a key logistical and public safety problem in states that have legalized medicinal or recreational cannabis and prevent federal banking regulators from: (1) prohibiting, penalizing or discouraging a bank from providing financial services to a legitimate state-sanctioned and regulated cannabis business, or an associated business (such as an lawyer or landlord providing services to a legal cannabis business); (2) terminating or limiting a
bank’s federal deposit insurance solely because the bank is providing services to a state-sanctioned cannabis business or associated business; (3) recommending or incentivizing a bank to halt or downgrade providing any kind of banking services to these businesses; or (4) taking any action on a loan to an owner or operator of a cannabis-related business.

The bill also creates a safe harbor from criminal prosecution and liability and asset forfeiture for banks and their officers and employees who provide financial services to legitimate, state-sanctioned cannabis businesses, while maintaining banks’ right to choose not to offer those services.

The bill would require banks to comply with current Financial Crimes Enforcement Network (FinCEN) guidance, while at the same time allowing FinCEN guidance to be streamlined over time as states and the federal government adapt to legalized medicinal and recreational cannabis policies.

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Federal entitlement reform is always under consideration in Washington, and in the 115th Congress the Affordable Care Act and Medicaid were targeted for cuts. Major health legislation introduced in 2017 would have cut federal funding for Medicaid by one-fourth, or $800 billion over the next decade. While these efforts were ultimately unsuccessful, they normalized methods for changing the Medicaid program through models such as a per capita cap or block grant.

Under a per capita cap, states would receive a fixed amount of federal funding per beneficiary category. Under a block grant, states would receive a fixed amount of federal funding each year, regardless of changes in program enrollment and mandates. If these cuts had been implemented it would have been devastating to the finances of New York’s counties and New York City, as the burden of caring for the low income and disabled populations would fall directly on them.

In New York, counties and New York City are required to contribute $7.5 billion annually to pay for the costs of Medicaid. This annual contribution (not including disproportionate share matching payments to health facilities) is more than all counties combined nationally spend for direct Medicaid program costs. In addition, New York City and several counties maintain public hospitals that provide care for the indigent and needy. More than a dozen counties and New York City maintain and operate 22 nursing homes that are often a provider of last resort for the needy in their communities.

**Recommendations for the Counties of New York State**

**Oppose Block Grants and Per Capita Caps or Other Federal Funding Cuts to Medicaid.** New York counties support protecting the federal-state partnership structure for financing and delivering Medicaid services while maximizing flexibility to support local systems of care. Counties are opposed to measures that would further shift Medicaid costs from the federal government to states and counties, including proposals to institute block grants or per capita caps.

**Support Stabilizing the Affordable Care Act and Maintaining Enhanced Federal Medicaid Matching.** New York and its counties have benefited fiscally from the provisions of the Affordable Care Act related to the enhanced federal Medicaid match that is currently generating more than $400 million annually in additional federal funding for counties to support Medicaid expansion costs under the Affordable Care Act. Overall, New York has seen a significant reduction in the number of uninsured due to the provisions of the Affordable Care Act. The uninsured rate in 2017 was about four percent in upstate New York, less than half of what it was before the Affordable Care Act (ACA) was enacted, and premiums in the individual market have remained more than 55% lower, after adjusting for inflation and before the application of federal tax credits, than they were before the ACA. Counties oppose federal actions that undermine the stability of the health insurance marketplaces established under the Affordable Care Act.

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Recent federal tax reforms enacted by congress included a significantly unbalanced tax change that overturned 150 years of federal-state fiscal precedent under which the federal government agreed and understood that it was counterproductive and unfair to impose a “defacto” double tax on state residents. To avoid unfair “double taxation” the federal government provided a federal tax deduction for state and local taxes paid to specifically avoid the application of federal taxes on top of state and local taxes already paid—effectively taxing income that is never available to the taxpayer. A large share of these state and local taxes are raised to meet federal laws and policy objectives that provide for the public good including health care, a free and appropriate education, and public safety and security.

The state and local tax (SALT) deduction cap also falls disproportionately on a small number of states, effectively requiring these states to finance a large share of the entire cost of the federal corporate and individual tax cuts according to joint committee on taxation estimates. The cost also falls disproportionately on many two income middle class households, while creating a federal tax penalty for married people.

**Recommendations for the Counties of New York State**

Because the federal SALT tax deduction limits will negatively impact the entire state of New York, regardless of whether an individual tax filer is personally impacted, the New York State Association of Counties supports congressional efforts to correct the most imbalanced features of the SALT deduction limits that disproportionately impact a large segment of middle income taxpayers in a handful of states.

At a minimum, congress should eliminate the marriage penalty created under the current SALT deductibility cap that imposes the same $10,000 cap on an individual as it does on a married couple. For a married couple the SALT cap should be no less than $20,000. Nearly all parts of the federal tax code work to avoid penalizing marriage by doubling individual tax deductibility limits, estate tax thresholds and gift limits to ensure balance. Alternatively, provisions that eliminate the SALT deductibility cap entirely, or for incomes under a certain income threshold, should be considered.

**Additional Background**

While many New Yorkers will benefit from several provisions in the Federal Tax Reforms enacted in December of 2017, many other New Yorkers will be hurt by the $10,000 cap on the state and local tax deduction. New Yorkers pay some of the highest property taxes in the nation, along with a progressive income tax rate. As a result, many homeowners (particularly in downstate areas where home prices are generally very high) pay much more than $10,000 in combined income and property taxes. It is important to note that the federal tax changes related to SALT will impact downstate areas much differently than most of upstate. However, the negative fiscal impacts generated downstate, because of their size, will hurt the whole state and over time these impacts will grow. They will also undermine the ability of local governments to raise revenue to support state and federally mandated spending.

For decades, New York State has been a donor state to the federal government. This means we send far more in federal income taxes to Washington than we get back in federal grants and aid. In the most recent year this imbalance was nearly $50 billion. The new federal SALT limitations unfairly
shift even more revenues from New York State, and a handful of others, and redistributes that money to the rest of the nation. The imbalance experienced by donor states like New York, reduces our overall GDP growth, while enhancing the GDP of “donee” states that receive a larger share of federal payments (which allows them to have lower state and local taxes). A better balance needs to be found on the SALT provisions going forward.

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The recent U.S. Supreme Court decision regarding the collection of Internet sales tax by states provided a positive outcome for states, which the White House supported. There have been efforts in the past by Congress to change federal laws to create a nationwide standard for internet sales tax collections, but it has been many years since there has been any serious attempt. With the new Supreme Court decision in place, states now have a clear blueprint for how they can move forward and still maintain the rights of all parties impacted. Because of recent events, we do not believe Congress needs to enact any new federal law that imposes a federally mandated one-size-fits all solution. The Supreme Court has provided a path forward and states should be allowed to proceed on their own without congressional intervention.

Thirty-seven states and the District of Columbia have already enacted laws to collect sales tax on Internet transactions made in their states, with many already collecting the sales tax. All of these states used the blueprint laid out in the Supreme Court decision to ensure a level playing field and fairness for all retailers involved in the marketplace.

The Supreme Court was quite clear in their decision to overturn the *Quill* precedent that the Court itself had created market distortions by their earlier decision and that the Court was correcting that mistake in their decision to overturn. Under these circumstances the Court does not believe Congress needs to make any further adjustments.

**RECOMMENDATIONS FOR THE COUNTIES OF NEW YORK STATE**

The counties of New York are requesting that congressional leaders not pursue federal legislation that imposes a new one-size-fits-all sales tax collection system on states. At this time, Congress should let the Court’s decision stand and be the guide for state implementation.

**ADDITIONAL BACKGROUND**

For nearly half of New York’s counties their number one source of revenue is local sales tax. Additionally, nearly 25 percent of all county sales tax is shared directly with cities, towns and villages to help them keep their property taxes lower. For many years, counties and the State have seen sluggish growth in sales tax revenues and there is a general consensus that the dramatic rise in Internet shopping, especially since the Great Recession, has contributed to the slow growth.

This is also critically important for New York-based businesses that have struggled with an unfair competitive disadvantage for decades due to the Court’s prior decision in *Quill*. The Court even highlights in their new decision that the *Quill* precedent was not just wrong, but harmful, and created an unfair competitive playing field between brick and mortar retailers and Internet-based retailers.

The Supreme Court decision affirms that it is a state’s sovereign power and “…lawful prerogatives of the States…” to enforce their sales tax collection laws for Internet- and catalogue mail order-based purchases within their borders. The Court is clearly stating that this is a state’s rights issue and federal intervention by Congress is not necessary. Further, the decision states that it would be inconsistent for the Court “…to ask Congress to address a false constitutional premise of this Court’s own creation. Courts have acted as the front line of review in this limited sphere; and hence it is important that their principles be accurate and logical, whether or not Congress can or will act in response. It is currently the Court, and not Congress, that is limiting the lawful prerogatives of the States.”

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Large portion of New York State, like many other states across the nation are either underserved or not served at all by cellular phone carriers preventing residents and visitors from accessing emergency services through E-911.

Americans are increasing their dependency on cellular phones for voice communications. According to a study released in May of 2017 by the Center for Disease Control, 50.8% of US households rely solely on cellular phones - up from 24.5% from 2009. The percentage of young adults and renters who rely solely on cellular phone service is significantly higher with those aged 25-29 years old at 72.7% cellular reliance and adult renters at 71.5% cellular reliance. Consumers are moving to cellular reliance at a considerable rate, yet many rural areas throughout the United States remain either unserved or underserved by cellular carriers.

The sizable percentage of individuals who rely solely on cellular phone service, combined with the unserved and underserved areas of rural areas presents a substantial concern for public safety. Cellular phones and the requisite cellular coverage are, in many cases, the first link of our emergency response chain. Without adequate service, Americans who live in the unserved or underserved areas, along with visitors and travelers through these areas cannot reach emergency services when they become necessary.

The Federal Communications Commission (FCC) designates the Universal Service Administrative Company (USAC) to administer the Universal Service Fund. The USAC established the High Cost Program to provide funding to telecommunications carriers for the purpose of delivering service to rural areas where the market alone cannot support the cost to provide telecommunications services. In 2017, the USAC delivered more than $4.6 billion to telecommunications carriers; however, many areas in rural America remain unserved or underserved.

**Recommendations for the Counties of New York State**

The counties of New York are requesting that congressional leaders identify viable funding for the build-out of additional cellular communication capabilities in the unserved and underserved areas of New York and the United States. The USAC established the High Cost Program to provide funding to telecommunications carriers for the purpose of delivering service to rural areas where the market alone cannot support the cost to provide telecommunications services. This is one vehicle that should be used to deploy much needed cellular service coverage.

**Additional Background**

At the request of NYSAC, Governor Cuomo has called for the creation of an Upstate Cellular Coverage taskforce to identify solutions and develop policies addressing the lack of cellular coverage throughout New York State. Counties have urged the Governor to name and convene the task force by March 1, 2019 to begin this work. Counties have also suggested that this program be modeled after the New NY Broadband Program which has successfully combined federal and state resources with private developers to construct and deploy broadband connections throughout the state. This model can be replicated to deploy, construct and maintain cellular infrastructure as well. Counties have suggested that initially, this project should target communities in the Adirondack and Catskill Parks region with seed funding, and then grow and deploy this program to other rural parts of the state.

For more information on the NYSAC position regarding this issue, visit [www.nysac.org](http://www.nysac.org) or call 518-465-1473.
SET MAXIMUM CONTAINMENT LEVELS (MCLs) FOR PFOA/PFOS AND CLASSIFY THESE CHEMICALS AS HAZARDOUS SUBSTANCES

In partnership with the New York State Association of County Health Officials (NYSACHO), counties across the state have been urging the U.S. Environmental Protection Agency (EPA) to set maximum containment levels for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) and classify these chemicals as hazardous substances. New York has already classified PFOA/PFOS as hazardous substances on the state level in recognition of their negative environmental and public health impact.

Establishing a MCL for these chemicals and classifying them as hazardous substances is vital to protecting the health, safety, and welfare of New Yorkers. Exposure to PFOA and PFOS has been linked to kidney cancer, testicular cancer, pre-eclampsia, thyroid disease, developmental defects in fetuses, liver tissue damage, and immune system impairments, among other potentially life-threatening conditions. Additionally, a report recently released by the federal Agency for Toxic Substances and Disease Registry (ATSDR) finds that human health risks may occur at levels significantly lower than the current federal recommendations. ATSDR’s report recommends setting a MCL to protect the 16 million Americans in 33 states whose drinking water systems are contaminated by PFAS.

RECOMMENDATIONS FOR THE COUNTIES OF NEW YORK STATE

The United States has an obligation to provide for the health and welfare of its citizens by setting a country-wide MCL that limits exposure to these dangerous chemicals. Additionally, the EPA should classify PFOA/PFOS as hazardous substances to allow states and local governments to drawdown funds necessary for remediation.

We recognize the significant efforts that have been across the United States to address the dangers associated with these chemicals in our landfills, drinking water, surface water and environment. The federal government, in partnership with the state government, should commended for their care and ongoing concern. Establishing an enforceable MCL and classifying these substances as hazardous are the logical next steps and should be taken as soon as possible.

ADDITIONAL BACKGROUND

EPA has established health advisories for PFOA and PFOS based on the agency’s assessment of the latest peer-reviewed science to provide drinking water system operators, and state, tribal and local officials who have the primary responsibility for overseeing these systems, with information on the health risks of these chemicals, so they can take the appropriate actions to protect their residents. EPA is committed to supporting states and public water systems as they determine the appropriate steps to reduce exposure to PFOA and PFOS in drinking water. As science on health effects of these chemicals evolves, EPA will continue to evaluate new evidence.

To provide Americans, including the most sensitive populations, with a margin of protection from a lifetime of exposure to PFOA and PFOS from drinking water, EPA has established the health advisory levels at 70 parts per trillion.
While a health advisory is an initial step in combatting this crisis, a health advisory is not adequate enough to effectively remediate these chemicals. The EPA must set an MCL for PFOA and PFOS.
The Families First Prevention Services Act was attached to a Continuing Resolution in February 2018 last year over the objections of numerous states. The State of New York and the New York State Association of Counties continues to have significant concerns with the Families First Prevention Services Act. While we believe the legislation is well intentioned and appropriately targets federal funding for prevention services, alcohol and substance abuse counseling and in-home parenting skills – the legislation does this by taking funding away from families and children in the greatest need of services and will significantly hurt New York State and its counties. The bill also imposes highly inflexible and bureaucratic preventive services verification process, while requiring a one-size-fits-all approach to addressing complex family situations.

As currently drafted, the bill creates a huge unfunded mandate for the State of New York and its counties, as confirmed by the Congressional Budget Office. The State and county social service commissioners are working intensely on transitioning to the new services model envisioned by the legislation, but we still have significant reservations about our ability to implement the law successfully due to a severe lack of federal funding support and unrealistic timelines created under the law.

Promoting prevention services to obviate the need for foster care placements is good policy, but it needs to be funded over and above the existing IV-E foster care program. Having children with their families in a safe and caring environment is the primary goal, but that cannot always be achieved over the short and medium term. In these cases, foster care is the way to help children in need who have been abused and neglected and provides them and their families a way to receive the help they need.

The bill importantly recognizes the challenge that mental health and substance use disorders can play in destabilizing families and even placing children at risk of neglect and abuse. Unfortunately, while providing matching funds for mental health and substance abuse counseling is important, the current mental health and substance abuse system is woefully underfunded nationally, especially in light of the heroin and opioid epidemic gripping the nation today. The intention of this legislation is well placed but severely underfunded to maintain needed services for families in crisis today while also expanding and enhancing sorely needed prevention services.

The State of New York estimates that this legislation will lead to a direct loss of funding for New York families in crisis of more than $200 million annually. County departments of social services work at the direction of and in partnership with NYS Office of Children and Family Services to reduce the number of children in foster care. Despite a long record of success in reducing foster care placements, there are still a lot of occasions when placement into a congregate care setting is in the best interest of the child and family on a temporary basis.

**Recommendations for the Counties of New York State**

Counties will continue to work with the Congressional Delegation to make adjustments to the bill to help ensure a successful outcome. Currently, New York has sought and received a federal waiver to delay implementation of the law for two years. During this time, we will work on making reforms in service delivery within the state and also pursue the following changes offered by the NYS Office of Family and Children Services (OCFS) in order to avert a fiscal disaster for counties and the children we serve including:
• Authorize a child specific exception to the 30-day assessment requirement for children placed in a qualified residential treatment program (QRTP);
• Extend the assessment period to 60 days; and
• Eliminate the requirement for a court assessment within 60 days of a QRTP placement and instead allow the issue of appropriateness of continued placement in the congregate setting be part of the periodic permanency hearing.

For more information on the NYSAC position regarding this issue, visit www.nysac.org or call 518-465-1473.