



Ken Jenkins
Chairman, Board of Legislators
www.westchesterlegislators.com



Robert P. Astorino
Westchester County Executive
www.westchestergov.com

May 10, 2010

Dear Governor Paterson, State Legislative Leaders & Members of the Westchester County Delegation to the New York State Legislature:

Westchester County residents and officials certainly understand the fiscal challenges that New York State will face this budget year. The overall economic downturn has adversely impacted millions of residents, county governments, school districts and municipalities throughout the State. Westchester County has not been immune to the ills of the recession. Many communities are facing significant budget gaps and are cutting services and personnel in response to the existing financial crisis.

Given the current economic state, it is our position that any budget actions taken by the State must not exacerbate the local property tax situation. Westchester will continue to oppose any actions that would shift the costs of state programs to county or local governments.

Submitted herein for consideration are parts "A, A1 & B" – the complete 2010 Westchester County Joint State Legislative Package. Our primary concern remains the issue of excessive property taxes. We have identified the principal areas where the State can provide much-needed tax relief without shifting the burden to other levels of government. These include, but are not limited to:

1. A full repeal of the MTA Payroll Tax,
2. Tightened guidelines for Electronic Court Appearance waivers to increase participation,
3. Relief to counties with regards to the financial burdens imposed by current Early Intervention and Pre-K programs.

We look forward to working with you and your staff to find an equitable solution that will resolve Westchester County's budget concerns without increasing the State's fiscal burden.

Sincerely,

Handwritten signature of Robert P. Astorino in black ink.

Robert P. Astorino
County Executive

Handwritten signature of Ken Jenkins in black ink.

Ken Jenkins
Chair, Board of Legislators

Handwritten signature of Michael B. Kaplowitz in black ink.

Michael B. Kaplowitz, J.D., CFP
Chair, Government Operations,
Efficiency & Savings Committee

**2010 WESTCHESTER COUNTY
JOINT LEGISLATIVE PACKAGE**

PACKAGE 'A' – BUDGETARY PRIORITIES

1. Proposal: A Full Repeal of the MTA Payroll Tax and a Mandate of an Independent Forensic Audit of the MTA.

Justification: Last year the New York State Legislature authorized the Metropolitan Transit Authority (MTA) to implement a payroll tax of 34 cents for every \$100 earned, which applies to public, nonprofit and private employers in the MTA's 12 county jurisdiction. This tax lessens New York's economic competitiveness and is hurting local businesses, including nonprofit organizations, that are already struggling financially. This legislation levied additional taxes on local municipalities, school districts, hospitals, nursing homes and businesses, additionally burdening our region's already financially stressed citizenry. Further, this tax acts as a jobs deterrent and could potentially lead to layoffs.

The Metropolitan Transit Authority has not demonstrated the financial discipline to make the necessary cuts to their operating budget in order to forestall the need for this tax, and therefore has irresponsibly forced the burden of their fiscal mismanagement onto the taxpayers of New York State, hence the need for a REPEAL of the MTA Payroll Tax, as well as a full, independent forensic audit of the MTA, at their own expense, to highlight ways to cut expenses, introduce budgetary efficiencies and identify potential fraud and mismanagement.

Fiscal Impact: Westchester County Government taxpayers alone are paying \$1,489,000. In addition, it will cost municipalities, school districts, businesses and self-employed individuals millions of dollars. The Westchester County Health Care Corporation (Westchester Medical Center) is assessed another \$1 million annually.

Legislative History:

Article 23- Tax

2. Proposal: A Westchester County Pilot Program for Electronic Court Appearance-to remove defendant option.

Justification: In an effort to save money on prisoner transportation, while at the same time increasing public safety, the use of Electronic Court appearances has become an essential tool. Unfortunately, due to the inmate consent requirement contained in the

current version of the NYS CPL section 182.20, nearly all inmates view their court appearances as an opportunity to get out of jail and refuse consent, thus eliminating this potential saving time and money. Therefore, we are requesting a pilot program in Westchester County that would remove the option from the defendant, subject to Judicial guidance, and with any and all constitutional and civil liberties protected.

Fiscal Impact: The immediate savings are estimated at \$80,000 for overtime costs in WCPD transportation as they transport all jail arrests to Mount Pleasant Court (approximately 1500 arrests per year, or 20-30 prisoners per week). This is the only local court set up for court conferencing currently. Only 2-3% of the inmates eligible for video conferencing currently permit this because of the CPL. If the legislation is passed, we can expand this program to the courts that DOC and WCPD currently transport prisoners, yielding significant savings to the County. We may also expand the video court system to many routine appearances and reduce DOC daily court processing of non required court appearances. The exact figures may be hard to quantify but is expected to be significant on many levels and savings may increase from year to year.

Legislative History: NYS CPL section 182.20 (1)

3. Proposal: Amending State Public Health Law regarding Early Intervention and Pre-K Program.

a) Language in section 3235-a of state Insurance Law must be tightened to ensure payment of private insurance monies for eligible Early Intervention services.

Justification: Westchester provides approximately 6,000 children with EI services. Since the program's inception in 1993, Westchester has seen a steady increase in the number of children served, as well as an increase in the level of services. In the 1993-94 program years, the EI program cost the county \$5,110,862. The projected cost of this program in the 2009-10 program years is \$46,495,496. In addition, the percentage of state aid was recently reduced from 50% to 49%, thus placing additional burden on Westchester's taxpayers.

In 1993, New York State implemented the Part C (then part H) of the federal Individuals with Disabilities Education Act (IDEA) under Article 25 of the NYS Public Health Law. Under Article 25, public and private commercial insurance is to be maximized in financing EI services. NYS Insurance and Public Health laws protect families from co-payments and deductibles, as well as service and monetary limits, when insurance is recouped for payment for EI services. Yet, despite these provisions in law, reimbursement from third party payers other than Medicaid has

been minimal, leaving State and municipal tax levy dollars the first and last payer for a non-means-tested entitlement program whose costs have escalated exponentially.

In recognition of the need to improve recoupment of insurance monies to help pay for EI, the Third Party Reimbursement Task Force of the New York State Early Intervention Coordinating Council was established in 1999.

The Task Force report issued in November 2001 showed a statewide rate of private insurance collection of only 9.3% in 1997. The Task Force also reported that, based on other states' experiences, specific legislation requiring private commercial insurers to pay for EI services was the single most important factor to improved collections as well as to reduce the administrative burden on counties.

An updated survey conducted by the New York State Association of County Health Officials showed that, excluding New York City, counties billed \$70.4 million to commercial carriers in 2003-2004, more than the amount billed to Medicaid. Despite extensive billing efforts by counties, the overall rate of recoupment remained the same, from 14.4% in 2000 to 12% in 2002 but the total expenditure reported by counties to bill commercial insurers was \$3.5 million.

Fiscal Impact: This proposal will not negatively impact services and will correct a 17 year unfair shift of financial burden from the for-profit private insurance industry to taxpayers.

Legislative History: 2002: A. 11436
2003-04: A.6760/S.2410-A
2005-06: A.1014-A/S.4365-A
2007-08: A.4399
2009: A. 3719

b) County property taxpayer financial liability should be eliminated and counties should be transitioned out of fiscal, programmatic and administrative responsibility for the preschool special education program (Pre-K Program). Between 1997 and 2010, the cost of this program tripled, from \$25.9 million to an estimated \$83.7 million. The tax levy burden shot up from \$10.8 million to \$35.9 million in this twelve year period.

Justification: In the 1970s, the Pre-K program was established under section 4410 of New York State Education Law. The program operates under the auspices of SED and decisions regarding eligibility for and levels of service are made by local school districts. Counties pay a local share for services. In addition, counties must administer the program including contracting with providers and processing claims for payment and reimbursement, yet continues to receive only \$75.00 per student to partially offset their

administrative costs. Since the inception of the program, the number of children, the levels of service, and the cost of services have escalated and continue to increase exponentially.

When New York State established the mandate for counties to pay for the 4410 program, it made the commitment to initially pay 59.5% of costs and escalate its share to 69.5% then 75% of total costs by the year 1994. However, insufficient appropriations by the state have left those commitments unfulfilled, with counties still paying 40.5% of costs in 2010.

Fiscal Impact: This proposal would have a positive fiscal impact on Westchester County and every other county in the state. In Westchester, the Pre-K program cost the county approximately \$80 million in 2009 and is budgeted at \$83.7 million for 2010. Taxpayers pay these amounts up front, with 59.5% reimbursement coming from the state each year, or in many cases, several years later.

Legislative History: Initially proposed in 2007 and 2008 in the County's legislative proposals and did not receive any sponsors. However, a similar proposal was in the 2008-2009 Governor's Executive Budget based on recommendations from the November 2007 report of the Task Force on Preschool Special Education.



2010 NYS Joint Legislative Package – Part ‘A-1’

1. Proposal: *Oppose Executive Budget Proposal Regarding Medicaid Disallowance.*

Justification: Article VII language in the proposal regarding the Medicaid cap (nearly \$204.9M in Westchester’s 2010 budget). The language proposes new limits on the State’s liability related to Federal disallowances or recoveries associated with the local administration of the program. Presently, localities have been held harmless, even for periods prior to the cap. This change would create both retroactive and prospective exposure.

Fiscal Impact: Medicaid covers \$204.9 million in Westchester’s 2010 budget.

Legislative History: The Law Department is concerned about past claims or recoveries under present audits and could get swept in under this bill language.

NYSAC: The Medicaid Cap limits a county’s financial liability in the Medicaid program.

2. Proposal: *Oppose elimination of the TANF Funding (used for the Summer Youth Employment Program).*

Justification: The Executive Budget proposed changes to the Temporary Assistance for Needy Families (TANF) program, which equates to a \$63.4 million negative impact to counties outside the City of New York. The proposal eliminated State General Fund support of the LAF (Local Administration Fund), which supports the State share of Food Stamps and Public Assistance Administration with Federal TANF Funding and increases the FFFS (Flexible Fund for Family Services) allocation by \$310.6 million. Moving this LAF Funding to Federal TANF Funding eliminates any funding match for administrative expenses for safety net and food stamp administration. In total the Executive Budget Funds the FFFS at \$3.1 billion.

Fiscal Impact: TANF funding was \$846,000, which was allocated to the Summer Youth Employment Program Fund.

3. Proposal: *Preserve open-ended child welfare and Community Optional Preventive Services (COPS) funding.*

Justification: The Executive Budget eliminates Community Optional Preventative Services (COPS) Funding. COPS Funding is used by counties to fund programs that prevent children from being placed in foster care or youth detention. Loss of these funds will result in the elimination of these services and could result in a higher long term impact

on the foster care on the detention youth systems. The plan to retroactively eliminate this funding will force counties to reallocate significant local funds to pay for services already rendered, thus expanding the true impact of this change on services offered by the local department of Social Services.

Legislative History: Although funding for Community Optional Preventive Services programs is reduced 10%, the State expects to be able to fully fund existing programs, because a number of programs statewide have been discontinued. Westchester has approximately \$6.8M in total program costs.

NYSAC: Some state budget proposals reject the governor's proposal to cut the \$34 million dollar program. The governor instead funds it at \$29.1 million dollars with FMAP for services provided on or after Oct 1, 2008; a county must submit claims to OCFS that separately identifies the costs of services and the outcomes of those services. OCFS has stressed that the \$29.1 million dollars is available for existing COPS on Oct 1, 2009 only. The total impact of the final a proposed State Budget on the COPS program represents a \$5 million impact statewide, \$1.8 million dollars for New York City and \$3.2 million for all other counties.

4. Proposal: *Office of Children and Family Services opposes the cost shift due to the New York State mandate to use additional Title XX Federal funds to pay for Adult Protective and Domestic Violence services.*

Fiscal Impact: \$855,000 in revenue loss.

5. Proposal: *Maintaining the capped Foster Care Block Grant but mandating costs associated with new Subsidized Kinship Guardianship program.*

Justification: Although the Department has supported the concept of subsidized kinship guardianship, with no additional funding it represents an unfunded mandate. Westchester County supports this program – however we cannot inherit the cost.

6. Proposal: *Pension Contribution Reform: request consideration of Tier 6 for new employees utilizing a defined contribution model. Also requesting that overtime shall not count in calculating future employee pension benefits.*

Justification: The ever increasing cost of pension obligations is projected to become a huge budgetary burden. It is projected that the cost for Westchester County will more than double over the next three years (see chart below). This burden is unsustainable.

Westchester County Historical and Projected Retirement Contributions:

YEAR	ERS weighted AVG (1)	PFRS weighted AVG (1)	Total Budgeted/ projected Cost (2)
2013	22.70%	28.70%	117,756,059
2012	19.06%	24.40%	97,346,314
2011	15.40%	20.10%	76,539,972
2010	11.50%	16.13%	54,945,993
2009	7.93%	14.06%	37,784,495
2008	9.10%	14.77%	41,395,961
2007	10.05%	14.81%	43,222,648
2006	10.86%	14.83%	43,236,300
2005	11.68%	14.55%	44,234,432

(1) 2011, 2012, 2013 projections for the rates confirmed by Mike Dutcher NYS Actuary

(2) Includes trust accounts, DEF and all General Fund

While the County contribution rates did go down in 2008 and 2009 after the market run-up it was not by the same percentage terms as the market increase. This is due to the costs associated with the aging workforce. This circumstance combined with the substantial recent market correction (amortized over a 5 year period) and subsequent slow market recovery results in more than doubling the pension contributions for the county, state and other municipalities in New York. The Governor and the Comptroller have different proposals to mitigate the increases through stretching out the contributions. These proposals however would require the County to pay more later to benefit from lower contributions now. The contribution rates do not start going down for about five years according to the Actuary for the state pension systems.

NYSAC: The Executive Budget proposes several changes impacting the pension and benefits of many public employees and makes several changes to State employees that may impact local labor negotiations in the future.



2010 NYS Joint Legislative Package – Part 'B'

1. Proposal: *Information Technology Procurement Savings Act of 2010 provides local governments and school districts more contract flexibility.*

Justification: This legislation will provide fiscal relief and increased operational flexibility for local governments and school districts by allowing for the purchasing of information technology and telecommunications products and services through cooperative purchasing by local governments and school districts.

Legislative History: A.8624a-b and S.5600a in 2009/2010.

Fiscal Impact: None.

2. Proposal: *To allow not-for-profits that provide services to a county to make purchases, or contract for services, through that county in the same manner as other political subdivisions can.*

Justification: During these difficult economic times, local governments are struggling to provide essential services while minimizing the impact to taxpayers the rising costs for both commodities and services. One way in which local governments are successfully minimizing costs to taxpayers is through the collaborative procurement of goods and services with other local governments.

This legislation will allow not-for-profit corporations to also procure goods and services collaboratively with local governments, to minimize the cost of providing services.

Legislative History: New Bill.

Fiscal Impact: None.

3. Proposal: *Direct the PSC to allow residential ratepayers the option of obtaining a "smart meter" by authorizing the County of Westchester to develop and implement a real-time smart metering PILOT program.*

Justification: Smart metering programs already exist for large commercial and industrial users of electricity, which have proven successful in New York and throughout the United States as a means to control costs, conserve energy, and prevent service disruptions. Smart metering and demand response programs could provide residential electricity consumers with electricity rate price signals so that such consumers would have accurate knowledge to properly alter their behavior and utilize electricity during cheaper off-peak times of the day.

This would have two benefits:

- a) The cost of electricity could be reduced for residential customers because it would be utilized when the price of electricity was low; and
- b) the demand for electricity from peak times to off-peak times would shift, thereby reducing the stress that is placed on electrical generating plants, transmission lines, and the national electrical grid to provide more power during peak usage times. This, in turn, would reduce the likelihood of blackouts and other service disruptions that can happen when power plants and transmission lines are forced to produce large amounts of electricity at or above their normal generating capacity.

Legislative History: A.8739 and S.7876 in 2007/2008.

Fiscal Impact: None.

4. Proposal: *Require boat safety certification for the operation of motor and sail boats.*

Justification: To ensure that all persons who operate a mechanically-propelled vessel understand the proper boating laws. Inexperienced and/or reckless boaters cause a great deal of danger and property damage when they irresponsibly drive at excessive speeds while not obeying navigation laws or do not understand the laws. Many boaters have never taken a boating safety course and while they may think they are abiding by the navigation laws, they put themselves, as well as others, in danger. While the vast majority of boat operators may know every aspect of navigation, there are many who do not realize the potential for damage that can be caused with the slightest mistake while boating in a heavily boated waterway and being unaware of the correct procedures. This legislation enjoys broad support. For example, boating safety experts and instructors such as the U.S. Power Squadrons and boating associations such as the Tug and Barge Association, support this legislation.

Legislative History: A.5889a-c and S.5752a-b in 2008/2009.

Fiscal Impact: None.