

# **GOVERNMENT OPERATIONS COMMITTEE**

**July 5, 2016 at 1:00 p.m.**

**Location: Legislative Chambers**

Committee members: Mark Morris, Jim Multer, Earle Gleason, Bonnie Percy, Jim Smith

Mark and Earle will do the audit this month.

- Public Comment
- Approve minutes of the June meeting

## **Legislative Operations**

### **County Clerk – Lois Hall**

- Statistical Report
- DMV update
- Various updates

### **County Attorney – Scott Falvey**

- Set Date For Public Hearing On Local Law 2-16 Renewal and Revision Of Local Law 4-07 Entitled “A Local Law Establishing An Occupancy Tax In Yates County”

### **Soil & Water – Jim Balyszak**

- Program updates

### **Cornell Cooperative Extension – Arlene Wilson**

- Nothing submitted

### **IT – Tim Groth**

- Monthly statistics
- Program updates

### **Elections – Robert Brechko/Amy Daines**

- Review month activities

### **Clerk of the Legislature – Connie Hayes**

- Memo on various updates
- Resolution Adopting Standard Work Day and Reporting Resolution for Elected and Appointed Officials
- Resolution Authorizing the Chairman to Sign an Agreement With Finger Lakes Community College

### **Personnel – Kerry Brennan**

- Notifications
- Items for Discussion: DA Salary
- Items still in progress

Resolutions:

- Amend Resolution Number 205-16 – Adopt Non-Union Salary Schedule
- Cancer Screening

**EXECUTIVE SESSION – If needed**

## INTER-OFFICE CORRESPONDENCE

### YATES COUNTY

TO: Mark Morris, Chair  
Legislators Government Operations Committee

FROM: Lois Hall, County Clerk

SUBJECT: Updates—County Clerk's Office

DATE: June 28, 2016

#### STATISTICAL REPORTS

January 2016 through May 2016, Statistical Report, including two year's prior totals for transactions processed in the Recording Office is attached. Also, the DMV report indicating collections from January through May 2016 with 13- month comparison.

#### DMV

The proposed legislative increase in county revenue retention fees to 25 percent from the current 12.7 percent did not pass the Assembly. The two bills under consideration were Senate Bill S.4964A and Assembly Bill A.8201 DMV Revenue Sharing Bills.

Attached is a copy of the DMV White Paper with information that is beneficial for understanding what the County Clerk's role is regarding this.

#### COUNTY CLERK

The Assembly and Senate passed legislation (A.10527,Fahy/S.6708Ritchie) that dedicates unused local governments records management funds. State Finance Law created New York State Local Government Improvement Fund to help local government needs, which is a primary function of county clerks. The funding for this program comes from transactional revenues from departments of motor vehicles (DMVs) and fees rendered by county clerks.

Historically, unused funds from the Records Management Improvement Fund are diverted into the State's general fund, reducing the amount available for future program grants.

This information was sent to us from Mark LaVigne from NYSAC.

New equipment from ACS will be installed on July 5, 2016. This equipment is the E Recording equipment we have been waiting for.

I will not be attending the July 5<sup>th</sup> Government Operations meeting as I will be obtaining training on the new equipment as it is installed.

# Department, Group, Class Statistical Report

Yates County, Lois E. Hall, Yates County Clerk  
( Jan 01, 2016 thru May 31, 2016 )

01/01/2016 05/31/2016	01/01/2015 05/31/2015	01/01/2014 05/31/2014
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## Official Records

			1 Year Ago		2 Year(s) Ago	
<b>Charge Account Pymnts</b>	45,586.25	67	38,665.00	77	31,187.25	38
Account Payment	45,586.25	67	38,665.00	77	31,187.25	38
<b>Court Fees</b>	29,610.00	354	52,585.00	528	45,920.00	536
Civil Search	10.00	1	10.00	1		
Criminal Search	40.00	4	780.00	78	740.00	74
Index Number	9,870.00	47	24,360.00	116	21,000.00	100
Index Number Divorce	4,200.00	20	3,780.00	18	3,780.00	18
Index Number Exempt	.00	17	.00	14	.00	12
Index Number Exempt Divorce	.00	7	.00	6	.00	6
Index Number Fee w/o Number	420.00	2			210.00	1
Index Number Foreclosure	1,470.00	7	6,090.00	29	3,150.00	15
Index Number Foreclosure Add Fee	1,330.00	7	5,510.00	29	2,850.00	15
Jury Demand	195.00	3	65.00	1	130.00	2
Motion Exempt					.00	7
Motion/Cross Motion	4,545.00	101	4,455.00	99	5,580.00	124
Note of Issue Exempt	.00	2	.00	3	.00	3
Note of Issue With RJI PD	780.00	26	540.00	18	720.00	24
Note of Issue Without RJI PD	60.00	2	30.00	1	30.00	1
Notice of Appeal	65.00	1	130.00	2	65.00	1
Request Judicial Inventn	5,415.00	57	5,225.00	55	5,700.00	60
RJI Exempt	.00	12	.00	12	.00	16
Separation Agreement	20.00	4			5.00	1
Stipulation of Settlement	175.00	5	315.00	9	350.00	10
Voluntary Discontinuance	1,015.00	29	1,295.00	37	1,610.00	46
<b>Equalization Asment</b>	70,625.00	460	49,375.00	330	46,875.00	312
RP-5217 (Exempt)	.00	3			.00	2
RP-5217 Commercial	27,000.00	108	16,250.00	65	16,250.00	65
RP-5217 Resid/Agric	43,625.00	349	33,125.00	265	30,625.00	245
<b>Filling Fees</b>	11,941.00	1014	14,669.00	870	12,254.50	830
Affidavit	10.00	2	5.00	1		
Affidavit - Attachment	605.00	121	610.00	122	505.00	101
Agreement Deed Book	520.00	8	393.50	7	105.50	2
Assign Deed Exempt					.00	1
Assignment Deed Book	3,372.50	37	2,482.50	39	2,039.50	31
Boundary Line Agreement	100.00	2	328.00	6	411.00	8
Building & Loan Agreement	250.00	10	350.00	14	300.00	12
Building & Loan Agreement No Fee	.00	1				
Corporation \$\$ Only	250.00	1	3,660.00	11	2,572.00	7
Corporation-From NY	.00	7	.00	2	.00	7
County Map	9.00	3	24.00	8	36.00	12
Doing Business As	1,700.00	68	2,025.00	81	1,525.00	61
Doing Business As - \$\$ Only	179.00	7	50.00	2	200.00	8
Doing Business As - From NY	.00	92	.00	48	.00	85
Fed Tax Lien			280.00	7	360.00	9
Federal Tax Lien - Direct deposit	40.00	1				
Federal Tax Lien Release	160.00	4	160.00	4	280.00	7
Lis Pendens	735.00	21	1,155.00	33	875.00	25

# Department, Group, Class Statistical Report

Yates County, Lois E. Hall, Yates County Clerk  
( Jan 01, 2016 thru May 31, 2016 )

01/01/2016 05/31/2016	01/01/2015 05/31/2015	01/01/2014 05/31/2014
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## Official Records

			1 Year Ago		2 Year(s) Ago	
<b>Filing Fees</b>	11,941.00	1014	14,669.00	870	12,254.50	830
Map Filing	1,070.00	107	1,030.00	103	910.00	91
Mechanics Lien	30.00	2	15.00	1	15.00	1
Miscellaneous Deed W Inst#	320.50	5	141.00	3	290.50	4
Miscellaneous Recording No Fee	.00	1				
Mortgage Discharge Exempt	.00	1			.00	4
Mortgage Exempt	.00	4	.00	7	.00	2
Notice of Lending	90.00	6	165.00	11	135.00	9
TP-584	2,485.00	497	1,755.00	351	1,650.00	330
TP-584 - Exempt	.00	3	.00	1	.00	4
TP-584 Additional	15.00	3	35.00	7	40.00	8
TP-584.2			5.00	1	5.00	1
<b>Judgement Fees</b>	240.00	263	215.00	247	225.00	240
Judgment Exempt	.00	237	.00	224	.00	216
Judgment Transcript	220.00	22	200.00	20	210.00	21
Judgment Transcript Issue	20.00	4	15.00	3	15.00	3
<b>MISC - Other Fees</b>	23,003.20	3915	19,097.59	3374	18,366.70	3205
Adjusting Entry	.25	1	.00	2	.00	4
Affidavit Attachment Exempt	.00	4	.00	7	.00	4
Autobill - Auto Account Print	1,331.20	667	1,134.90	565	1,155.05	566
Certificate	35.00	7	15.00	3	25.00	5
Copies and Map Copies	4,802.75	588	4,635.69	569	4,541.15	451
Coversheet	6,985.00	1397	6,170.00	1234	6,100.00	1220
Coversheet Exempt	.00	8	.00	11	.00	13
Execution Issued	20.00	4	30.00	6	10.00	2
Miscellaneous Filing	544.50	99	390.50	71	544.50	99
Miscellaneous Filing No Fee	.00	3	.00	1	.00	15
Mortgage Tax Miscellaneous Filing			11.00	2	11.00	2
Notary Certificate	3.00	1	33.00	11		
Other	2,386.50	81	2,054.50	110	1,682.00	99
Passport Photo	1,590.00	159	1,330.00	133	1,190.00	119
Photo	2,110.00	211	990.00	99	1,030.00	103
Pistol Permit	870.00	87	270.00	27	200.00	20
Pistol Permit Amendment	1,005.00	335	873.00	291	813.00	271
Pistol Permit Dealer/Gun	10.00	1			10.00	1
Pistol Permit Duplicate	1,280.00	256	1,095.00	219	1,015.00	203
Pistol Permit Transfer	30.00	6	65.00	13	40.00	8
<b>Mortgage Taxes</b>	364,437.51	316	335,383.04	336	288,411.73	295
Mortgage Apportionment	.00	4	.00	1	.00	1
Mortgage Tax	364,437.51	312	335,383.04	335	288,411.73	294
<b>Notary</b>	440.00	10	2,300.00	43	2,560.00	49
Notary - Exempt					.00	1
Notary Public	360.00	6	2,160.00	36	2,400.00	40
Notary Public - NY	80.00	4	140.00	7	160.00	8

# Department, Group, Class Statistical Report

Yates County, Lois E. Hall, Yates County Clerk

( Jan 01, 2016 thru May 31, 2016 )

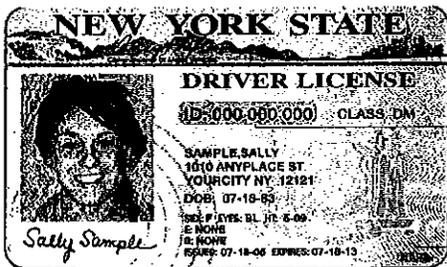
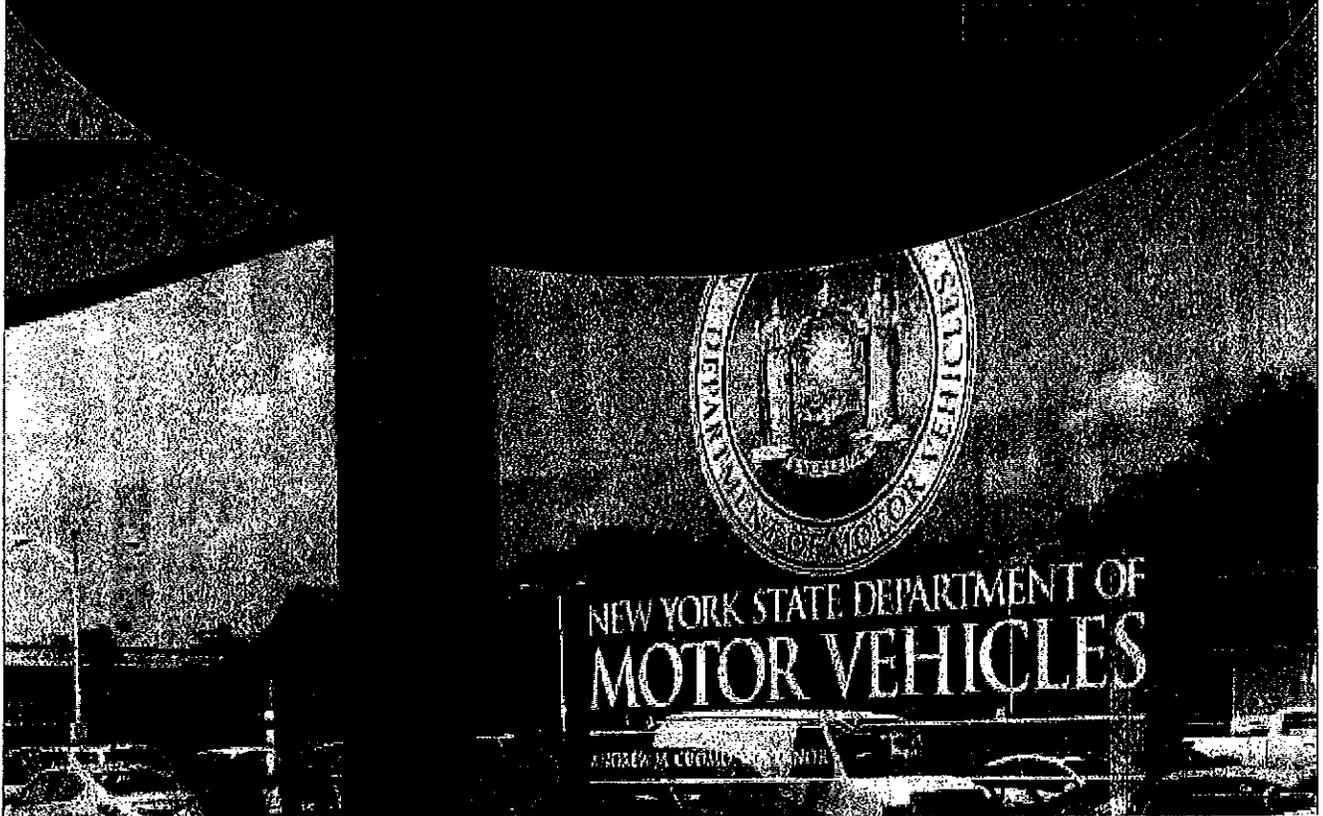
	01/01/2016	05/31/2016	01/01/2015	05/31/2015	01/01/2014	05/31/2014
<b>Official Records</b>			<b>1 Year Ago</b>		<b>2 Year(s) Ago</b>	
<b>Other Fees</b>	76,821.49	548	76,904.33	505	73,831.79	527
Dept Motor Vehicle	71,307.75	104	71,902.19	103	68,754.60	104
Dept Motor Vehicle Sales Tax	1,267.50	104	1,174.00	103	1,175.50	104
Dept Motor Vehicle Voluntary Surrender	1,040.00	104	961.00	103	986.00	104
Dissolution of Marriage	75.00	15	80.00	16	100.00	20
Non Refundable Fees	362.74	94	210.89	59	269.55	74
Passport	2,700.00	108	2,500.00	100	2,475.00	99
Postage	68.50	19	76.25	21	71.14	22
<b>Recording Fees</b>	91,242.50	1350	80,641.00	1185	78,559.50	1187
Deed	24,984.00	467	18,297.50	337	17,813.50	323
Deed Exempt	.00	3	.00	1	.00	2
Easement	1,085.50	15	525.50	8	190.00	3
Easement Government			55.00	1	110.00	2
Easement Public Utility	1,200.00	24	975.00	20	545.00	11
Estate Tax Recording	546.00	12	637.50	14	682.50	15
Judgment Assignment			.00	1	.00	3
Land Contract MTG Exempt					.00	2
Land Contract RETT Exempt			.00	1	.00	2
Land Contract with MTGTax	.00	2	.00	2	.00	2
Land Contract with RETT	135.00	2	70.00	1	135.00	2
Lease	1,146.50	17	270.50	5	1,611.00	9
Lease Exempt					.00	1
Miscellaneous Recordings	1,844.00	37	1,042.50	20	1,256.00	23
Mortgage	32,162.50	302	32,714.00	323	28,966.50	285
Mortgage Agreement	7,803.00	47	6,933.50	52	5,141.00	42
Mortgage Assignment	2,472.00	49	2,593.00	53	1,915.50	38
Mortgage Discharge	15,604.00	338	14,133.50	307	17,944.00	388
Mortgage Release	518.00	10	847.00	16	773.50	14
Power Of Attorney	1,742.00	25	1,546.50	23	1,476.00	20
<b>Transfer Taxes</b>	154,280.00	536	148,380.00	388	175,379.50	357
Transfer Tax	154,280.00	536	148,380.00	388	175,379.50	357
<b>UCC</b>	1,400.00	35	1,480.00	37	1,800.00	45
Uniform Commercial Code	1,400.00	35	1,480.00	37	1,800.00	45
<b>Veteran Cards</b>	.00	14	.00	24	.00	26
ID CARD	.00	14	.00	24	.00	26
	869,626.95	8882	819,694.96	7944	775,370.97	7647

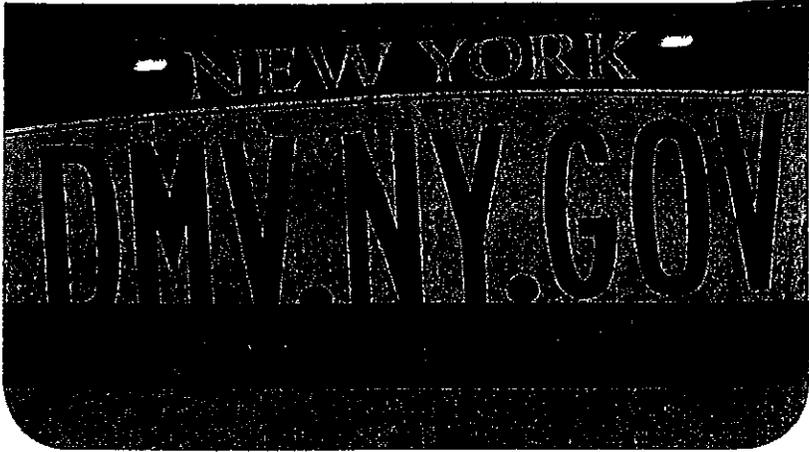
2016	2016	2016	2016	2016	2016	2015	2015	2015	2015	2015	2015	2015	2015
	JAN	FEB	MAR	APRIL	MAY	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
VEHICLE REGISTRATIONS	907	882	1390	1629	1495	1619	1302	1202	1047	887	1080	1392	1536
2 YR ORIGINAL	84	172	182	164	192	165	209	171	181	157	175	108	123
2 YEAR RENEWAL	240	294	373	393	383	435	411	399	342	319	350	271	260
BOATS	11	24	58	106	207	187	174	157	86	48	12	10	15
SNOWMOBILES	74	17	1	0	0	1	0	4	0	10	8	19	41
MISC	47	64	55	90	109	189	69	91	59	26	63	46	31
INTRANSIT PERMIT	0	0	1	1	1	0	0	0	3	1	1	2	2
DUP TITLE	13	14	23	21	19	31	25	19	25	20	24	31	10
TITLE ONLY IRP	15	13	14	12	17	9	10	10	11	12	7	9	2
LICENSES	136	127	160	146	162	130	160	180	139	184	168	128	130
PHOTO ID	26	29	36	42	31	23	33	20	40	23	43	18	39
LICENSE ABSTRACTS	22	22	32	23	26	27	25	23	28	27	21	20	13
PERMITS	23	39	60	69	75	60	59	55	54	40	45	32	25
PLATE SURRENDER	155	166	178	171	177	170	201	190	182	190	237	223	164
DUPLICATE SURRENDERS	6	6	13	20	20	17	15	18	18	8	17	8	11
PLATES SURRENDER FS	45	42	44	24	36	36	40	34	40	38	32	37	40
FS CIVIL PENALTY	13	15	12	7	8	6	13	8	14	15	15	12	11
AMOUNT	\$ 2,508.00	\$ 1,666.00	\$ 3,040.00	\$ 776.00	\$ 966.00	\$ 552.00	\$ 2,728.00	\$ 1,118.00	\$ 1,712.00	\$ 2,428.00	\$ 2,740.00	\$ 2,210.00	\$ 1,740.00
INQUIRY LETTER NO LAPSE	0	0	1	0	0	0	0	0	0	1	0	1	0
FS RECISSION	0	1	0	0	1	0	0	0	0	2	1	1	0
DRA	18	23	18	13	18	21	18	18	13	16	21	10	16
AMOUNT	\$4,425.00	\$7,175.00	\$4,275.00	\$3,225.00	\$3,525.00	\$3,850.00	\$4,625.00	\$5,550.00	\$3,150.00	\$ 4,700.00	\$ 4,125.00	\$ 2,350.00	\$3,485.00
ESCORT CERTIFICATION	0	0	\$0.00	0	1	0	0	0	0	1	0	0	0
ESCORT CERT FEES	\$				\$ 40.00					\$ 40.00			\$ 80.00
CIVIL PENALTY	0	1	0	0	1	0		2	3	1	0	1	1
AMOUNT	0	\$750.00	\$0.00	0	\$750.00	\$0.00		\$1,000.00	\$ 1,625.00	\$500.00	0	\$500.00	\$500.00
LICENSE COMPLIANCE	10	11	7	7	5	9	8	12	20	6	2	12	12
\$25.00 SUSPENSION TERM	6	8	6	3	2	5	5	7	11	3	2	7	7
DDP PROGRAM	3	2	0	2	1	4	1	2	5	2	0	4	2
CONDITIONAL LICENSE	1	2	0	0	2	2	1	2	2	1	1	1	2
RESTRICTED LICENSE	2	3	5	2	2	2	4	3	1	2	3	1	2
FULL LICENSE RESTORED	9	10	9	10	7	4	1	5	12	2	2	4	4
CONDITIONAL LICENSE	2	3	1	5	0	3	2	2	5	2	2	4	0
RESTRICTED LICENSE	4	1	2	2	2	1	0	3	7	0	2	0	0
SALES TAX RECEIPTS	159	221	307	306	368	349	348	351	320	246	229	176	185
SALES TAX ONLY RECEIPTS	15	15	15	18	18	11	12	11	13	13	9	11	13
VOTER REGISTRATION - YES	14	9	18	8	23	17	24	21	16	21	18	11	20
FEE PAYMENT RECEIPTS	24	35	34	44	45	34	44	40	23	35	43	28	28
FEE TO STATE (DMV)	\$45,530.78	\$34,659.73	\$53,550.14	\$38,374.41	\$43,961.07	\$39,454.52	\$45,575.68	\$42,401.29	\$39,174.73	\$39,916.94	\$38,409.36	\$48,824.69	\$79,096.26
SALES TAX	\$26,766.86	\$26,423.83	\$63,325.76	\$42,295.68	\$50,860.67	\$59,963.28	\$50,069.47	\$42,606.61	\$52,496.52	\$32,963.47	\$36,019.97	\$34,687.89	\$29,357.24
CREDIT CARD PAYMENT	\$36,194.24	\$48,051.41	\$65,501.29	\$72,742.87	\$76,313.55	\$73,944.96	\$74,819.56	\$65,313.88	\$56,489.69	\$48,876.39	\$55,697.81	\$40,179.14	\$53,839.90
FEE TO COUNTY (DMV)	\$11,383.73	\$12,217.55	\$16,559.57	\$15,377.47	\$16,601.43	\$15,590.27	\$16,605.53	\$14,387.60	\$13,219.68	\$12,320.17	\$13,112.33	\$12,482.17	\$18,807.84
FEE TO COUNTY (ST)	\$147.00	\$220.00	\$287.00	\$291.50	\$334.00	\$309.50	\$327.50	\$312.50	293.00.	\$243.00	\$215.50	\$171.50	\$186.00
TOTAL REVENUES	\$129,039.61	\$121,572.52	\$199,223.76	\$169,081.93	\$188,070.72	\$189,262.53	\$187,397.72	\$165,021.88	\$161,673.62	\$134,319.97	\$143,454.97	\$136,345.39	\$181,287.24

June 2016

**William Cherry**, *President*

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





## DMV

**N**ew York County Clerks play historic and important role as public servants. Along with the Sheriff and District Attorney, the county clerk is one of three county officials named in the State Constitution.

If fact, the role of the county clerk was established in the 1660's, under the Dongan Laws, which was an act of the British Crown to establish the original counties in the Colony of New York.

Over 350 years later, the role of the county clerk as the chief record and filing officer for the county has remained consistent, but their duties have grown much more complex with changes in population, technology, and the state's laws, policies and regulations.

In recent years, collectively these county records managers and clerks of the court pushed for and achieved state legislation to allow for electronic filings and electronic land record filings to help residents and the government achieve recording efficiencies and ease of use.

Another role of the county clerk that has evolved in the past century is that most now manage and operate local Departments of Motor Vehicles (DMV) Offices. This is not a function that was born from the State Constitution or from county local law/resolution. Instead, New York State Legislature under Vehicle and Traffic Law § 205 requires county clerks in 51 counties to serve as agents of the State DMV Commissioner. Their functions include, but are not limited to, the registration of motor vehicles, motorcycles, snowmobiles, vessels and all-terrain vehicles, the issuance of license plates, processing certificates of title, the issuance of non-driver identification cards and drivers' licenses, and motor vehicle enforcement transactions.



In many ways, the county clerks are best positioned to operate local DMV offices that serve the driving and identification needs of local residents. Clerks understand local needs and can respond to those needs more quickly than a state department can. For example, clerks control the location and hours of operation of local DMV offices, mindful of taxpayer concerns and county demographics.

Although providing local DMV service is in the best interest of New Yorkers, changing technologies and fee arrangements between counties and the state, are making it more challenging for county clerks to continue financing its operations and employing the hundreds of county employees that serve local drivers in 51 counties across the state.

Under the State law there is a fee sharing arrangement between the local DMV and the State which has not been adjusted since 1999. That arrangement pertains to all fees collected for work performed at county DMV's by county employees. Currently, counties retain 12.7% of the fees collected for work performed at county DMV's by county employees, and remits 87.3% to the New York State general fund. This is for fee only work and it is important to note there many functions a county DMV employee performs that attach no fee, instead these services cost the county to perform (see table 2).

As more and more New Yorkers use the Internet to conduct their DMV transactions online, this funding imbalance between the state and counties has further widened. The State keeps approximately 98% of all online DMV transactions, and remits a small share to counties that operate DMVs. The main problem is that the DMV business being conducted online are the typically faster and easier transactions, and the more difficult and time consuming transactions are done at the local DMV office. The result is that the DMVs operated by county clerks are doing the business that is more time and resource intensive, but their revenues are going down because the easier transactions are processed online, and the state receives nearly all of the fees. The result is that counties are finding themselves having to compete against the state for fee-based business. In 2014-15 the State DMV generated \$1.3 billion in transactional fees, of which a surplus of \$942 million went to the State's general fund. In contrast, the 51 county DMV offices combined generated only 39.7 million. The problem with this growing revenue gap is that it will leave New Yorkers with more complicated DMV transactional needs with fewer and fewer places to go because local DMV offices cannot continue to operate under a business model that is seeing steady declines in revenue.

## RECOMMENDATIONS:

MORE EQUITABLE  
INTERNET TRANSACTION  
ARRANGEMENT



A bi-partisan bill S.4964(Richie)/A8201(Brindisi) would provide a more equitable fee sharing arraignment between the state and counties, without increasing user fees for New Yorkers. The measure increase the county fee share from 12.7% to 25%, and increase the county internet transaction share to 8%. While the State would still obtain hundreds of millions more in this arrangement, the extra few millions to counties would go allow county DMV offices to provide their residents with essential services at the local level.

Page 1

2014-2015 Revenue and Retention Analysis

Total Projected State Revenue 2014-2015*	\$ 1,300,000,000
Total Projected State DMV Expense**	\$ 318,000,000
Total Revenue Sharing With Counties Projected***	\$ 39,764,000
Total Surplus to NYS	\$ 942,236,000
State Share as Percent of Total Revenue	24.46%
County Share as Percent of Total Revenue	3.06%
Surplus as Percent of Revenue	72.48%
Cost per 1 Point Increase in Retention Rate	\$ 3,131,000
Cost to Increase Retention to 17%	\$ 13,463,300
* from "FY 2015 Economic and Revenue Outlook" page330	
** NYS Division of Budget- 2014-2015 Executive Budget- Agency Appropriations	
*** Estimate provided by NYS DMV to Internet Revenue Task Team	



## DMV NO FEES TRANSACTIONS

1. Clearing insurance lapses
2. Change of address
3. Duplicate licenses issued by state for undeliverable documents
4. Scheduling operator tests
5. Issuing plates back that were surrendered with credit remaining
6. PSD (official) plate issuance
7. Replacement decals for snowmobiles
8. Unconditional license issuance after time served
9. Terminal duplicate document
10. Collecting for bad checks throughout state
11. Collection of sales tax only
12. License compliance
13. Duplicate plate surrenders
14. Abstracts for government
15. Clearing of out of state tickets
16. No fee title (Undelivered)
17. Some O/S Plate surrenders
18. Corrections on registrations (change color, etc)
19. Name change on registrations/titles
20. Amendment to permits/licenses for name w previous record
21. Exempt ambulances
22. DDP enrollment w pre conviction conditional license
23. Voluntary surrender of license
24. Image capture only for professional licenses
25. Answering hundreds of phone calls each week since the NYSDMV no longer has a toll free question line

**SET DATE FOR PUBLIC HEARING ON LOCAL LAW 2-16 RENEWAL AND  
REVISION OF LOCAL LAW 4-07 ENTITLED "A LOCAL LAW ESTABLISHING AN  
OCCUPANCY TAX IN YATES COUNTY"**

RESOLVED, that the Clerk of the Yates county Legislature is directed to advertise a public hearing on proposed local law 2-16 Entitled Renewal of Local Law 4-07 Establish Occupancy Tax

BE IT RESOLVED, said public hearing shall be held August 8, 2016 at 1:05p.m. in the Yates County Legislative Chambers, 417 Liberty St., Penn Yan, NY.

NEW YORK STATE DEPARTMENT OF STATE  
162 WASHINGTON AVENUE, ALBANY, NY

**Local Law Filing**

**12231 (Use this form to file a local law with the Secretary of State.)**

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underling to indicate new matter.

**County**  
~~City~~ of Yates  
~~Town~~  
~~Village~~

**Local Law No. 2-16**

**RENEWAL AND REVISION OF LOCAL LAW 4-07 ENTITLED "A LOCAL LAW  
ESTABLISHING AN OCCUPANCY TAX IN YATES COUNTY"**

(Insert Title)

**Be it enacted by the Legislature of the**

**County**

~~City~~ of Yates as follows:

~~Town~~

~~Village~~

BE IT ENACTED by the County Legislature of the County of Yates as follows:

**SECTION 1 Intent** - The Yates County Legislature declares that the intent and purpose of this Local Law shall be to impose a tax on facilities providing lodging on an overnight basis and provide for the collection thereof in order to make funds available for tourism and General Fund of Yates County. Pursuant thereto, the County of Yates has enacted on Occupancy Tax by way of Local Law No. 4-07 entitled "A Local Law Establishing an Occupancy Tax in Yates County", which was renewed by Local Law No. 1-10, and by Local Law No. 2-13. The intent of this Local Law is to further renew said Local Law 4-07, with revisions to the same as set forth herein.

**SECTION 2 Definitions** - When used in this local law, the following terms shall mean:

- (a) County - Yates County, New York

(b) County Treasurer – The Yates County Treasurer, or such other fiscal officer(s) of Yates County.

(c) County Legislature – The legislature of the County of Yates.

(d) Hotel or Motel – Any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as “bed and breakfast”, inns, cabins, condominiums, cottages, campgrounds, lodges, tourist homes, convention centers, and vacation rentals. The term condominium shall mean and include those units rented or leased directly by the owner or through a real estate agency or rental management agency. The provisions of this section relating to campgrounds, shall only apply to those leases and rentals in which the campground provides overnight shelter or lodging, and shall not apply to the provision of services by a campground when the customer provides his or her own shelter or lodging.

(e) Occupancy – The use or possession, or the right to the use or possession of any room in a hotel or motel.

(f) Occupant – A person who, for a charge or any consideration uses, possess, or has the right to use or possess, any room in a hotel or motel under any lease, concession, permit, right, license, agreement, or otherwise.

(g) Operator – Any person operating a hotel or motel, as those terms are defined in subdivision (d) above and elsewhere herein, including, but not limited to, the owner, proprietor, lessee, sub-lessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel or motel.

(h) Permanent Resident – Any person occupying any room or rooms in a hotel or motel for at least 30 consecutive days.

(i) Person – An individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

(j) Rent – The consideration received for occupancy valued in money, whether received in money or otherwise. The term rent includes separately stated charges for the use of furnishings and equipment, maid services, towel and linen services, telephone service and other accommodations. Any charges for food, drinks, entertainment, valet, laundry service, theater ticket service, transportation, and administration do not constitute rent.

(k) Return – Any return filed, or required to be filed, as herein provided.

(l) Room – any room or rooms of any kind in any part or portion of a hotel or motel, which is available for, rented or otherwise let out for the lodging of guests.

(m) State – The State of New York

**SECTION 3 Imposition of Tax** – Effective January 1, 2008, there is hereby imposed and there shall be paid a tax of four percent (4%) of the per diem rental rate upon the rent for each room or rooms in a hotel or motel located within the County, except that such tax shall not be applicable to a permanent resident of a hotel or motel.

**SECTION 4 Transitional Provisions** – The tax imposed by this local law shall be paid upon any occupancy on or after January 1, 2008, although such occupancy is pursuant to a prior contract, lease or other arrangement. Where rent is paid on a weekly or other term basis, the rent shall be subject to the tax imposed by this local law to the extent that it covers any period on or

after January 1, 2008. Any reservation for 2008 which is made prior to December 1, 2007, with a deposit, shall be exempt from the occupancy tax.

**SECTION 5 Exempt Organizations** – Section 1202-Y of the Tax Law does not authorize the imposition of this occupancy tax upon any transaction, by or with any of the following in accordance with Section 1230 of the Tax Law.

(a) The State of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state) or the Dominion of Canada, improvement district or other political subdivision of the State;

(b) The United States of America, insofar as it is immune from taxation;

(c) Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

**SECTION 6 Territorial Limitations** – The tax imposed by this local law shall apply only within the territorial limits of Yates County.

**SECTION 7 Registration** –

(a) Within ten (10) days after the effective date of this local law, or in the case of operators commencing business after such effective date, within three (3) days after such commencement or opening, every operator shall file with the County Treasurer a registration application in a form prescribed by the County Treasurer.

(b) The County Treasurer shall, within ten days after such registration, issue without charge to each operator, a certificate of authority empowering such operator to collect the tax from the occupant and duplicate thereof for each additional hotel of such operator. Each certificate or duplicate shall state the hotel or motel to which it is applicable. Such certificates of authority shall be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the County Treasurer upon the cessation of business at the hotel named or upon its sale or transfer.

**SECTION 8 Administration and Collection** –

(a) The tax imposed by this local law shall be administered and collected by the County Treasurer, or other fiscal officers of Yates County, by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by this local law.

(b) The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted for and charged for, and upon every evidence of occupancy or any bill or statement of charge made for such occupancy issued or delivered by the operator, and the tax shall be paid by

the occupant to the operator as trustee for and on account of the County, and the operator shall be liable for the collection thereof and subsequent payment of the same to the County Treasurer.

(c) The following persons shall be personally liable for the tax imposed, collected or required to be collected under this local law: i) the operator, ii) any member of a partnership operator, iii) any member of a limited liability company operator; and iv) any officer, director or employee of a corporation operator or dissolved corporation operator, any employee of a partnership operator, any employee or manager of a limited liability company operator, or any employee of an individual proprietorship operator who as such officer, director, employee or manager is under a duty to act for such corporation, partnership, limited liability company or individual proprietorship in complying with any requirement of this local law.

Any such person shall have the same right in respect to collecting the tax from the occupant, or in respect to non-payment of the tax by the occupant, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the County Treasurer or other fiscal officers, employees or agents specified in this local law, shall be joined as a party in any action or proceeding brought to collect the tax.

(d) Where any occupant has failed to pay a tax imposed by this local law, then in addition to all other rights, obligations and remedies provided in this local law, such tax shall be payable by the occupant directly to the County Treasurer and it shall be the duty of the occupant to file a return with the County Treasurer and to pay the tax to the County Treasurer within fifteen (15) days of the date the tax was required to be paid.

(e) The County Treasurer may, whenever he/she deems it necessary for the proper enforcement of this local law, provide by regulation that occupants shall file returns and pay directly to the County Treasurer any tax herein imposed, at such times as returns are required to be filed and payment made by an operator.

(f) For the purpose of the proper administration of this local law and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator.

(g) Where an occupant claims exemption from the tax under the provisions of section 5 of this local law, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a certificate duly executed by an exempt corporation or association.

**SECTION 9 Records To Be Kept** – Every operator shall keep records of every occupancy and of all rent paid, charged and due thereon and of the tax payable thereon, in such form as the County Treasurer may require. Such records shall be available for inspection and examination at any time upon demand by the County Treasurer or the County Treasurer's duly authorized agents or employees, and shall be preserved for a period of not less than three (3) years, except that the County Treasurer may consent in writing to their destruction within that period, or may in writing require that such records be kept and maintained for a specified period in excess of three (3) years.

**SECTION 10 Returns** –

(a) Every operator shall file with the County Treasurer a return of occupancy and of rents, and of the taxes payable thereon for the quarterly periods ending February 28, May 31, August 31 and November 30 of each year on or after January 1, 2008. Such returns shall be filed

within twenty (20) days from the expiration of the period covered thereby. The County Treasurer may permit or require returns to be made by other periods and upon such dates as may be specified. If the County Treasurer deems it necessary in order to insure the payment of the tax imposed by this local law, then the County Treasurer may require returns to be made for shorter periods than those prescribed pursuant to the foregoing provisions of this section and upon such dates as may be specified.

(b) The forms of returns shall be prescribed by the County Treasurer and shall contain such information as he or she may deem necessary for the proper administration of this local law. The county Treasurer may require amended returns to be filed within twenty (20) days after notice and to contain the information specified in the notice.

(c) If the return required by this local law is not filed, or a return filed is incorrect or insufficient on its face, then the County Treasurer shall take the necessary steps to enforce the filing of such return, or of a corrected return.

#### **SECTION 11 Payment of tax -**

(a) Upon the time of filing a return of occupancy and of rents, each operator shall pay to the County Treasurer the taxes imposed by this local law upon the rents required to be included in such return, as well as other monies collected by the operator acting, or purporting to act, under the provisions of this local law.

(b) Where the County Treasurer, in his or her discretion, deems it necessary to protect revenues to be obtained under this local law, the County Treasurer may require any operator obligated to collect the tax imposed by this local law to file with the County Treasurer's office a bond, issued by a surety company authorized to transact business in this state and approved by the New York State Superintendent of Insurance as to solvency and responsibility, in such amount as the County Treasurer may fix to secure the payment of any tax and/or penalties and interest due, or which may become due, from such operator.

(c) In the event the County Treasurer determines that an operator is to file such bond, notice shall be given by the County Treasurer to such operator to that effect specifying the amount of the bond required.

(d) The operator shall file such bond within five (5) days after the issuance of such notice, unless within five (5), days the operator shall serve upon and deliver to the County Treasurer a written request for a hearing before the Finance Committee at which time the necessity, propriety and amount of the bond shall be determined by the County Treasurer. Any determination by the County Treasurer upon such hearing shall be final and shall be complied with by the operator within fifteen (15) days after the giving of notices thereof.

(e) In lieu of such bond, securities approved by the County Treasurer or cash in such amount as may be prescribed, may be deposited which shall be kept in the custody of the County Treasurer, who may at any time without notice to the depositor apply them to any tax and interest and penalties due, and for that purpose, the securities may be sold by the County Treasurer at public or private sale, without notice to the depositor thereof.

#### **SECTION 12 Determination of Tax –**

(a) If a return required by this local law is not filed, or if a return is incorrect or insufficient, then the amount of tax due shall be determined by the County Treasurer from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, type of

accommodations and service, number of employees and/or other factors. Such notice of determination shall be mailed by certified or registered mail to the person or persons liable for the collection or payment of the tax at his/her last known address. If such person or persons is deceased or under a legal disability, a notice of determination may be mailed to his/her last known address, unless the County Treasurer has received notice of the existence of a fiduciary relationship with respect to such person. After thirty (30) days from the mailing of such notice of determination, such notice of determination shall be an assessment of the amount of tax specified in such notice of determination, together with the interest, additions to tax and penalties stated in such notice of determination. Such notice of determination shall finally and irrevocably fix the tax, unless the person against whom it is assessed, within the above stated thirty (30) day time period, applies to the County Treasurer for a hearing, or unless the County Treasurer of his or her own motion shall re-determine the same. After such hearing, the County Treasurer shall give a notice of determination made to the person(s) against whom the tax is assessed. Any final determination of the amount of any tax payable hereunder, shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the Civil Practice Law and Rules, if application therefore is made to the Supreme Court within thirty (30) days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the Civil Practice Law and Rules shall not be instituted unless:

(1) The amount of tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in New York State and approved by the New York State Superintendent of Insurance as to solvency and responsibility, in such amount as a justice of the Supreme Court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

(2) At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests, and penalties stated in such determination, plus the costs and charges which may accrue against such petitioner in the prosecution of the proceeding, in which event, the petitioner shall not be required to pay such taxes, interests or penalties as a condition precedent to the application.

(b) Whenever such tax is estimated as provided for in this Section 12, such notice shall contain a statement conspicuously placed on such notice advising the applicable person(s): that the amount of the tax was estimated; that the tax may be challenged through a hearing process; and that the petition for such challenge must be filed with the County Treasurer within thirty (30) days.

(c) The liability of the a purchaser, transferee or assignee of assets sold, transferred or assigned in bulk for the payment to the County of taxes determined to be due from the seller, transferor or assignor arising under subdivision (c) of Section 17 of this local law shall be an assessment of the liability determined unless the purchaser, transferee or assignee, within thirty (30) days after the giving of notice by the County Treasurer to such purchaser, transferee or assignee of the total amount of any tax or taxes which the County claims to be due from the seller, transferor or assignor, shall apply to the County Treasurer for a hearing unless the County Treasurer, on its own motion, shall re-determine such liability. Where the County Treasurer determines that the amount of taxes claimed due from the seller, transferor or assignor is erroneous or excessive in whole or in part it shall, on behalf of the purchaser, transferee or

assignee, determine the amount of tax or taxes properly due and if such amount is less than the amount of taxes for which the purchaser would have been liable in the absence of such determination it shall reduce such liability accordingly.

(d) The liability, pursuant to subdivision (c)(iv) of Section 8 of this local law, of any officer, director or employee of a corporation operator or dissolved corporation operator, any employee of a partnership operator, any employee or manager of a limited liability company operator, or any employee of an individual proprietorship operator who as such officer, director, employee or manager is under a duty to act for such corporation, partnership, limited liability company or individual proprietorship in complying with any requirement of this local law for the tax imposed, collected or required to be collected, or for the tax required to be paid or paid over to the County Treasurer under this local law, and the amount of such tax liability (whether or not a return is filed under this local law, whether or not such return when filed is incorrect or insufficient, or where the tax shown to be due on the return filed under this local law has not been paid or has not been paid in full) shall be determined by the County Treasurer in the manner provided for in subdivisions (a) and (b) of this Section 12. Such determination shall be an assessment of the tax and liability for the tax with respect to such person unless such person, within thirty (30) days after the giving of notice of such determination, shall apply to the County Treasurer for a hearing. If such determination is identical to or arises out of a previously issued determination of tax of the corporation, dissolved corporation, partnership, limited liability company or individual proprietorship for which such person is under a duty to act, an application filed with the County Treasurer on behalf of the corporation, dissolved corporation, partnership, limited liability company or individual proprietorship shall be deemed to include any and all subsequently issued personal determinations and a separate application to the County Treasurer for a hearing shall not be required. The County Treasurer may, nevertheless, of its own motion, re-determine such determination of tax or liability for tax. Where the County Treasurer determines or re-determines that the amount of tax claimed to be due from the operator is erroneous or excessive in whole or in part, it shall re-determine the amount of tax properly due from any such person, and if such amount is less than the amount of tax for which such person would have been liable in the absence of such determination or re-determination, it shall reduce such liability accordingly.

(e) If the County Treasurer believes that the collection of any tax will be jeopardized by delay, for reasons including but not limited to, a person liable for the tax is about to cease business, leave the state or remove or dissipate assets out of which the tax or penalties and interest might be satisfied, the County Treasurer may determine the amount of such tax and assess the same, together with all interest and penalties provided by this local law, against any person liable therefor prior to the filing of a return and prior to the date when such return is required to be filed. The amount so determined shall become due and payable to the County Treasurer by the person(s) against whom such a jeopardy assessment is made, as soon as notice thereof is given to such person personally or by registered or certified mail. The provisions of subdivisions (a) and (b) of this Section 12 shall apply to any such determination except to the extent that they may be inconsistent with this subdivision. The County Treasurer may abate any jeopardy assessment if it finds that jeopardy does not exist.

### **SECTION 13 Refunds –**

(a) In the manner provided in this section, the County Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected

or paid, if application to the County Treasurer for such refund shall be made within one year of payment thereof. Whenever a refund is made by the County Treasurer, the reason therefore shall be stated in writing. Such application may be made by the operator, or other person who has actually paid the tax. Such application may also be made by an operator who has collected and paid over such tax to the County Treasurer, provided the application is made within one year of the payment by the occupant to the operator, but no actual refund of money shall be paid to such operator until it is first established to the satisfaction of the County Treasurer, under such regulations as the County Treasurer may prescribe, that the County Treasurer has repaid to the occupant the amount for which the application for refund is made. The County Treasurer may in lieu of any refund required to be made, allow credit therefore on payments due from the applicant.

(b) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the Civil Practice Law and Rules, provided, however, that such proceeding is instituted within thirty (30) days after the giving of the notice of such denial, that final determination of the tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the Supreme Court shall approve, to the effect that such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

**SECTION 14 Reserves** In cases where the operator or other person who has paid the tax has applied for a refund and has instituted a proceeding under article seventy-eight of the Civil Practice Law and Rules to review a determination adverse to such operator or other person who has paid the tax on such application for a refund, the County Treasurer shall set aside sufficient monies to meet any decision adverse to the County.

**SECTION 15 Disposition Of Revenues** – All revenues resulting from the imposition of the tax under this local law shall be paid into the treasury of Yates County and shall be credited to, and deposited in, the General Fund of the County. Thereafter the revenues from the tax after the cost of administration is deducted (said cost of administration being a percentage of such revenues, said percentage being established by County resolution, but not to exceed 10% of such revenues, to defer the necessary expenses of the County in administering such tax), shall be equally divided for the purpose of i) promoting tourism in the County (Yates County Tourism) and ii) the enhancement of the general economy in the County, its towns and villages (Yates County General Fund).

**SECTION 16 Remedies Exclusive** - The remedies provided by sections twelve (12) and thirteen (13) of this local law shall be the exclusive remedies available to any person for the review of the tax liability imposed by this local law; and no determination, or proposed determination, of tax or determination of any application for refund or credit shall be enjoined, contested or reviewed by any action or proceeding, except by a proceeding under article seventy-eight of the Civil Practice Law and Rules provided, however, that a taxpayer may proceed by declaratory judgment if suit is instituted within thirty (30) days after a deficiency assessment to

the County Treasurer prior to the institution of such suit and posts a bond for costs pursuant to section twelve (12) of this local law.

### **SECTION 17 Proceedings to Recover Tax**

(a) Whenever any operator or other person liable for the tax shall fail to collect or pay over and/or to pay any tax, penalty or interest imposed by this local law as herein provided, or whenever any occupant shall fail to pay any such tax, penalty or interest, the County Attorney shall, upon the request of the County Treasurer, bring or cause to be brought an action to enforce the payment of the same on behalf of Yates County in any court of the State of New York or any other state or of the United States.

(b) As an additional or alternate remedy, the County Treasurer may issue a warrant, directed to the Yates County Sheriff or to the sheriff of any other county, commanding him to levy upon and sell the real and personal property of any person liable for the tax, which may be found within that sheriff's county, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the County Treasurer and to pay to the County Treasurer the money collected by virtue thereof within sixty (60) days after the receipt of such warrant. The Sheriff shall, within five (5) days after the receipt of the warrant, file with the County Clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person(s) mentioned in the warrant and the amount of the tax, with any penalties and interest, for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person(s) against whom the warrant is issued. Such lien shall not apply to personal property unless another copy of such warrant is filed in the New York State Department of State. The sheriff shall then proceed upon the warrant, in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant the sheriff shall be entitled to the same fees, which may be collected in the same manner. In the discretion of the County Treasurer, a warrant of like terms and effect may be issued and directed to any officer or employee of the County Treasurer and in the execution thereof such officer or employee shall have all the powers conferred upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. Upon such filing of a copy of a warrant, the County Treasurer shall have the same remedies to enforce the amount due thereunder as if the County had recovered judgment therefore. If a warrant is returned not satisfied in full, the County Treasurer may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as provided in this section.

(c) Whenever an operator or other person liable for the tax shall make a sale, transfer or assignment in bulk of any part of the whole of a hotel, motel, or lease, or of such operator's business assets, otherwise than in the ordinary course of business, the following provisions shall apply:

(1) the purchaser, transferee or assignee shall, at least twenty (20) days before taking possession of the subject of such sale, transfer or assignment, or paying therefore, notify the County Treasurer by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor has represented to, or informed the purchaser, transferee or assignee that any tax is owed pursuant to this local law, and whether

or not the purchaser, transferee or assignee has knowledge that such taxes are owing and whether any such taxes are in fact owing;

(2) whenever the purchaser, transferee or assignee shall fail to give notice to the County Treasurer as required by the preceding paragraph (1), or whenever the County Treasurer shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor, shall be the subject of a first priority right and lien of any such taxes theretofore or thereafter determined to be due from the operator, seller, transferor or assignor to the County, and the purchaser, transferee or assignee is forbidden to transfer to the operator, seller, transferor or assignor and shall withhold, any such sums of money, property or choses in action, or other consideration to the extent of the amount of the County's claim. Within fifteen (15) days of receipt of the notice of the sale, transfer or assignment from the purchaser, transferee or assignee, the County Treasurer shall give notice to the purchaser, transferee or assignee and to the operator, seller, transferor or assignor of the total amount of any tax or taxes, as well as of any penalties or interest due thereon, which the County Treasurer claims to be due from the operator, seller, transferor or assignor to the County, and whenever the County Treasurer shall fail to give such notice within fifteen (15) days from receipt of the notice of the sale, transfer or assignment required by subdivision (1) of this paragraph, such failure shall release the purchaser, transferee or assignee from any further obligation to withhold any sums of money, property or choses in action or other consideration which the purchaser, transferee or assignee is required to transfer over to the operator, seller, transferor or assignor. For failure to comply with the provisions of this paragraph, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of Article Six of the Uniform Commercial Code, shall be personally liable for the payment determined to be due to the County from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this local law. Upon receipt of the County Treasurer's notice issued pursuant this paragraph stating the total amount of the County's claim, the purchaser, seller, transferee or assignee may make payment of such claim to the County Treasurer from any sums of money, property, or choses in action or other consideration withheld in accord with the provisions of this paragraph, except that such payment shall be limited to an amount not in excess of the purchase price or fair market value of the assets sold, transferred, or assigned to such purchaser, transferee, or assignee, whichever is higher, and upon making such payment the purchaser, transferee or assignee shall be relieved of all liability for such amounts to the operator, seller, transferor or assignor and such amounts paid to the County Treasurer shall be deemed satisfaction of the tax liability of the operator, seller, transferor or assignor to the extent of the amount of such payment.

**SECTION 18 General Powers of the County Treasurer** – In addition to the powers granted to the County Treasurer by County Law and this local law, the County Treasurer is hereby authorized and empowered:

(a) To make, adopt and amend rules and regulations, and to issue orders, appropriate to the carrying out of this local law and the purposes thereof;

(b) To extend for cause shown, the time of filing any return for a period not exceeding thirty (30) days; and for cause shown, to remit or waive penalties, but not interest; and to compromise disputed claims in connection with the taxes hereby imposed;

(c) To request information from the Tax Commissioner of the State of New York or the Treasury Department of the United States relative to any person; and to afford information to such Tax Commissioner or such Treasury Department relative to any person, and any other provision of this local law to the contrary notwithstanding;

(d) To delegate such functions hereunder to any employee or employees of the County Treasurer;

(e) To prescribe methods for determining the rents for occupancy and to determine the taxable and non-taxable rents;

(f) To require any operator within the County to keep detailed records of the nature and type of hotel or motel maintained, nature and type of service rendered, the rooms available and rooms occupied daily, leases or occupancy contracts or arrangements, rents received charged and accrued, the names and addresses of the occupants, whether or not any occupancy is claimed to be subject to the tax imposed by this local law, and to furnish such information upon request to the County Treasurer;

(g) To assess, determine, revise and readjust the taxes imposed under this local law.

#### **SECTION 19 Administration of Oaths and Compelling Testimony**

(a) The County Treasurer, or the County Treasurer's duly designated and authorized employees or agents, shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the County Treasurer's powers and duties under this local law.

(b) The County Treasurer shall have the power to subpoena and require the attendance of witnesses and the production of books, papers, and documents to secure information pertinent to the performance of his or her duties hereunder and of the enforcement of this local law, and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the County Treasurer or excuse from attendance.

(c) A justice of the Supreme Court, either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the County Treasurer under this local law.

(d) Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any material matter pending before the County Treasurer under this local law shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one year, or both such fine and imprisonment.

(e) The officers who serve the summons or subpoena of the County Treasurer and witnesses attending in response there to shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided.

(f) The County Sheriff, the Sheriff's duly appointed deputies, and any officer or employee of the County Treasurer designated to serve process under this local law, are hereby authorized and empowered to serve any summons, subpoena, order, notice, document, instrument, or other process to enforce or carry out this local law.

**SECTION 20 Reference to Tax** - Wherever reference is made in placards or advertisements or in any other publications to this tax, such reference shall be substantially in the following form:

“Occupancy Tax”; except that in any bill, receipt, statement or other evidence of memorandum of occupancy or rent charge issued or employed by the operator, the word “tax” will suffice.

### **SECTION 21 Penalties, Interest, and Violation**

(a) Any person failing to file a return or to pay or pay over any tax to the Treasurer within the time required by this local law shall be subject to:

- (1) a penalty of five percent (5%) of the amount of tax due; plus
- (2) interest at the rate of one percent (1%) of the amount of tax due for each month of delay, except that no interest shall be charged for the first thirty (30) days immediately after the date such return was required to be filed or such tax became due.

(b) The County Treasurer, if satisfied the delay was excusable, may remit or waive all or any part of the penalty but not the interest owed. Such penalties and interest shall be paid and disposed of in the same manner as other revenues from this local law. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this local law. Any person that is personally liable for the tax imposed, collected or required to be collected under this local law shall also be personally liable for the penalties and interest herein imposed.

(c) In addition to the penalties herein or elsewhere prescribed, any person found to have committed any of the following acts shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand (\$1,000) dollars or imprisonment for not more than one (1) year, or both such fine and imprisonment:

- (1) failing to file a return required by this local law;
- (2) filing or causing to be filed, or making or causing to be made, or giving or causing to be given, any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this local law which is willfully false;
- (3) willfully failing to file a bond required to be filed pursuant to this local law;
- (4) failing to file a registration certificate and such data in connection therewith as the Treasurer may by order, regulation or otherwise require;
- (5) failing to display, or to surrender upon demand of the Treasurer the certificate of authority as required by this local law;
- (6) assigning or transferring such a certificate of authority;
- (7) willfully failing to charge separately from the rent the tax herein imposed, or willfully failing to state such tax separately on any evidence of occupancy and on any bill or statement or receipt of rent issued or employed by the operator;
- (8) willfully failing or refusing to collect any tax imposed by this local law from the occupant;
- (9) referring or causing reference to be made to this tax in a form or manner other than that required by this local law; or
- (10) failing to keep or maintain the records required by this local law.

(d) The certificate of the County Treasurer to the effect that a tax has not been paid, that a return, bond or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this local law, shall be presumptive evidence thereof.

### **SECTION 22 Returns to be Confidential**

(a) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the County Treasurer to divulge, or make known in any manner, the rents or other information relating to the business of the taxpayer contained in any return required

under this local law. The officers charged with the custody of such returns shall be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the County Treasurer in an action or proceeding under the provisions of this local law or on behalf of any party to any action or proceeding under this local law, when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit into evidence, so much of such returns,

or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer, or his or her duly authorized representative, of a certified copy of any return filed in connection with his or her tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the County Attorney or other legal representatives of the County of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty. Returns shall be preserved for three (3) years and thereafter until the County Treasurer permits them to be destroyed.

(b) Any violation of this section shall be punishable by a fine not exceeding one thousand dollars (\$1,000).

### **SECTION 23 Notice and Limitations of Time**

(a) Any notice authorized or required under the provisions of this local law may be given by mailing the same to the person for whom it is intended in a post-paid envelope addressed to such person at the address given in the last return filed by him or her pursuant to the provisions of this local law, or in any application made by him or her, or if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom it is addressed. Any period of time which is determined according to the provisions of the local law giving of notice shall commence to run from the date of such notice.

(b) The provisions of the Civil Practice Law and Rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the County to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this local law. However, except in the case of a willfully false or fraudulent return with the intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three (3) years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law, the tax may be assessed at any time.

(c) Where, before the expiration of the period described herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

**SECTION 24 SEPARABILITY** – If any provision of this local law or the application thereof to any person or circumstance shall be held invalid, the remainder of this local law and the application of such provision to other persons or circumstances shall not be affected thereby.

**SECTION 25 Limitation of Effect of Local Law** -- This local law shall remain in full force and effect for a period of three (3) years from the date of enactment by the Yates County Legislature; except nothing shall prohibit or prevent the adoption and enactment of subsequent local laws continuing or imposing the tax authorized hereby after the expiration of this local law.

**SECTION 26 Effective Date** -- This local law shall take effect January 1, 2017.



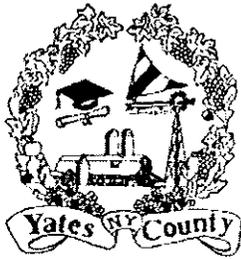
## Government Operations Committee

New agricultural grant: We recently received state funds in the amount of \$229,672 to implement best management practices in the Keuka Lake watershed that includes both Yates and Steuben counties.

This grant will be administered by our office and implemented by Soil & Water staff in both counties. There are thirteen participating farms and fourteen conservation practices will be installed to control erosion, stabilize streams and protect water quality through the installation of pesticide mixing and loading facilities. The participating farms will contribute 35% towards the cost of the projects and these will be completed over the next three years.

Keuka Park stormwater inventory: We have completed approximately 50% of the inventory and mapping work of the stormwater infrastructure in the Keuka Park area. The goal is to document the location, configuration and interaction of the various private, town and county stormwater systems which can then be used to analyze flooding problems, determine critical locations for further evaluation and plan potential upgrades or changes to the current systems.

Tile bioreactor project: The experimental field tile treatment system for the removal of nitrogen has been installed. Cornell University will be collecting water samples to study the effectiveness of this treatment system. If good results are obtained from these experimental systems, the goal is to have the US Department of Agriculture develop an engineering standard for this conservation practice which would then be eligible for grant funding.



## YATES COUNTY INFORMATION TECHNOLOGY

417 Liberty Street, Suite 2027

Penn Yan, New York 14527

Phone: 315-531-3444

Fax: 315-531-3226

### MEMORANDUM

To: Government Operations Committee

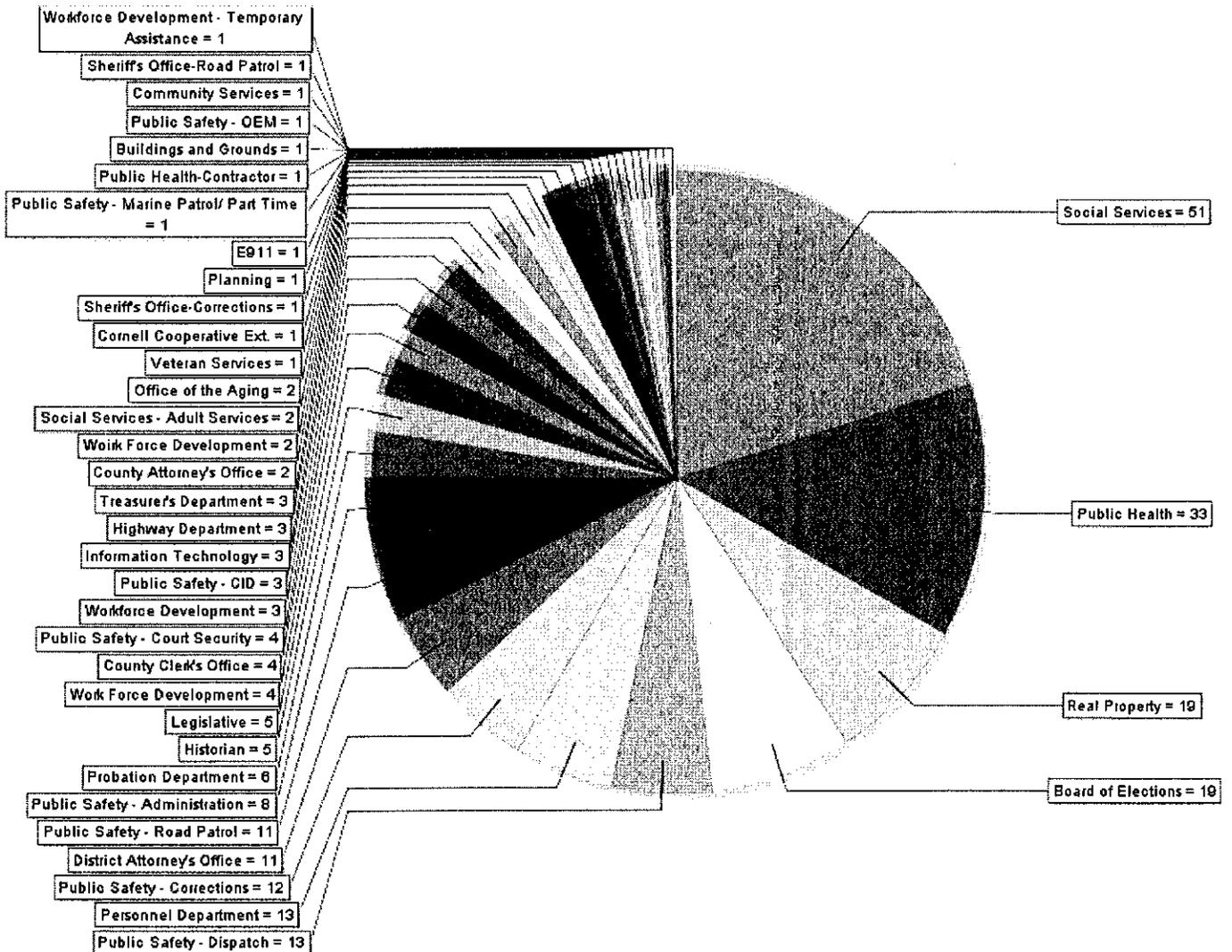
From: Tim Groth  
I.T. Director

Date: June 30, 2016

Re: Report for June 2016

#### Help-Desk calls

In the month of May the helpdesk took in a total of 253 calls and 3 of the calls were classified as "User Error".



## Received Requests by Date by Department

	2016					Count
	Jan	Feb	Mar	Apr	May	
Board of Elections	8	7	18	7	19	59
Buildings and Grounds	0	0	0	4	1	5
Community Services	0	0	1	0	1	2
Conflict Defender	0	0	1	0	0	1
Cornell Cooperative Ext.	0	0	0	0	1	1
County Attorney's Office	0	0	0	3	2	5
County Clerk's Office	3	1	1	4	4	13
District Attorney's Office	2	5	0	6	11	24
Highway Department	1	3	0	2	3	9
Historian	2	1	0	1	5	9
Information Technology	1	7	3	2	3	16
Legislative	7	7	6	9	5	34
Office of the Aging	0	1	0	0	2	3
Personnel Department	22	16	8	13	13	72
Planning	0	0	1	0	1	2
Probation Department	3	4	10	1	6	24
Public Defender	0	1	0	0	0	1
Public Health	9	14	28	23	34	108
Public Safety - Administration	21	16	5	14	8	64
Public Safety - CID	5	4	0	10	3	22
Public Safety - Corrections	5	7	17	18	13	60
Public Safety - Court Security	1	4	2	5	4	16
Public Safety - Dispatch	18	32	17	28	14	109
Public Safety - Marine Patrol	3	1	0	0	1	5
Public Safety - OEM	3	2	3	1	1	10
Public Safety - Road Patrol	5	14	24	15	12	70
Real Property	9	3	21	18	19	70
Social Services	45	41	45	68	53	252
Soil and Water	0	1	1	0	0	2
Treasurer's Department	1	3	11	7	3	25
Veteran Services	2	1	2	2	1	8
Workforce Development	10	5	8	3	10	36
<b>Count</b>	186	201	233	264	253	1137

## 2016 Email & Internet Statistics

Jan    Feb    Mar    Apr    May    Jun

### Traffic Summary

Inbound Messages	61014	72288	142483	104743	142459	62260
Average Inbound Messages / hour	82	103.9	191.8	145.5	191.5	86.5
Outbound Messages	10175	10404	12101	10956	10333	9880
Average Outbound Messages / Hour	13.7	14.9	16.3	15.2	13.9	13.7

### Bandwidth Summary

Inbound Total Bandwidth	4.1 GB	4.4 GB	4.4 GB	4.4 GB	4.5 GB	4.4 GB
Average Inbound Message Size	69.7 KB	63.2 KB	32.6 KB	44.4 KB	33.3 KB	74.2 KB
Outbound Total Bandwidth	1.6 GB	2.4 GB	2.6 GB	3.3 GB	2.5 GB	2.3 GB
Average Outbound Message Size	162.9 KB	237.5 KB	228.4 KB	315.5 KB	248.9 KB	240.6 KB

### Inbound Threat Summary

Total Viruses	285	635	2152	474	1144	487
Infection Rate	1/214	1/114	1/66	1/221	1/125	1/128
Total Spam Identified	10002	9837	10806	12092	8602	4008
Spam Volume	16.4%	13.6%	7.6%	11.5%	6.0%	6.4%
Spam Beacons Detected	40152	41462	46266	43261	42832	40367
Content Policy Violations	0	0	0	0	0	0
Attachment Policy Violations	12	19	539	164	301	16

### Outbound Threat Summary

Total Viruses	0	0	0	0	0	0
Infection Rate	0/10175	0/10404	0/12101	0/10956	0/10333	0/9880
Total Spam Identified	37	116	52	80	288	82
Spam Volume	0.4%	1.1%	0.4%	0.7%	2.8%	0.8%
Content Policy Violations	10	16	11	25	30	25
Attachment Policy Violations	0	4	0	0	0	0

### Attachment Summary

Average Attachment Size	143.3 KB	162.5 KB	178.3 KB	213.9 KB	180.9 KB	213.7 KB
Executables	9	1	3	6	2	0
Scripts	5	13	535	157	299	9
Office Documents	2866	3946	3846	3029	3082	3144
Audio	0	17	28	25	7	14
Images	16975	17800	14032	14389	15584	11793
Compressed Archives	42	70	588	228	484	62

## Project Updates

- Network Refresh and VoIP Installation
  - The network refresh is 99% complete. SMP has completed the initial configuration and training of the new WebSense URL Filtering appliance. I.T. will continue to configure this appliance over the next several weeks. We have been experiencing configuration issues with the WSA that we are working on with our vendor.
  - The VoIP installation and training is complete. The planned cutover from the old PBX system to took place on June 2<sup>nd</sup> and took over 10 hours to complete. Thanks to SMP & Joe Reed for sticking with it and working with us until 3:00am in the morning to make this happen. We still have a few action items open with SMP that we are working on, but the system is up and fully functional. This part of the project has consumed much of I.T.'s time and resources and this will be an ongoing process in the months to come.
  
- Website update
  - Becky Olsen been working on fixes to the management side of the application in addition to working on content management for the Historian's web page.
  
- Internal Fiber upgrade
  - Todd Cable has installed the LIU's and terminated all of the internal fiber cable as agreed upon. We will start to migrate over to the new fiber in the upcoming weeks.
  
- MutualLink Installation & Configuration
  - We will be working with a company call MutualLink which is a firm that has contracted with NYS and is a network agnostic multimedia interoperability platform, Mutualink is designed to leverage the sharing of your existing radio, video, telephone, and IP-sensory equipment (including disparate systems), as well as next-generation communication technology. The equipment was provided by NYS at no cost to the counties and they are providing installation support. This technology will allow E911 centers from different counties to link their radio & telephone lines (up to a certain degree) in the event of large statewide emergencies via the Internet. This will give the E911 centers interoperability that was not previously available.
  
- Email Encryption Services
  - I.T. will be installing email encryption capabilities to all the PC's in the Public Health Department due to the requirements and sensitivity of their email. This licensing will be paid for through grant funding received by Public Health.

**To:** Government Operations Committee

**From:** Bob Brechko, Amy Daines

**Date:** June 29, 2016

**Subject:** Monthly Report for July 2016 Meeting

**State Legislative Update:** Another session has closed without changing the district size or combining Primary Elections, both changes would allow the Counties to save money off the cost of their elections. However, at the June conference call with the State we learned:

1. *New Election Law Chapters that became Law in 2016:*
  - a. *Chapter 42 of the Laws of 2016 (Assembly Bill 4186 / Senate Bill 2580) amends the Election Law to reference the 13th Judicial District, which was established several years ago. This proposal is NYSBOE 2016 program bill 16-1. The law is effective immediately.*
  - b. *Chapter 43 of the Laws of 2016 (Assembly Bill 7597 / Senate Bill 6979) repeals the section of law allowing amounts paid to lease a polling place for accessible sites. This proposal is NYSBOE 2016 program bill 16-06. The law is effective immediately.*
  - c. *Chapter 44 of the Laws of 2016 (Assembly Bill 7817 / Senate Bill 6818) removes outdated postal language from the requirement that an annual mail notification be sent to voters and comports requirements with current postal indicia options. This proposal is NYSBOE 2016 program bill 16-16. The law is effective immediately.*
2. *Legislation to amend the Election Law that passed both houses of the Legislature and is pending review by Governor Cuomo: Governor has until the end of the calendar year to make a decision.*
  - a. *Assembly Bill 3330 / Senate Bill 1384) eliminates conflicting provisions related to absentee ballot counting. Harmonizes statute to consistently reflect recently enacted requirement that absentee ballots are not counted at the poll sites. This proposal is NYSBOE 2016 program bill 16-04.*
  - b. *Assembly Bill 10105 / Senate Bill 7090) would allow political committees to file electronic copies of their campaign political communications. This proposal is NYSBOE 2016 program bill 16-10.*
  - c. *Assembly Bill 9919 / Senate Bill 6833) would permit the use of special ballots by those responding to emergency situations and provides for filing and transmittal assistance appropriate to emergency circumstances. This proposal is NYSBOE 2016 program bill 16-14.*
  - d. *Assembly Bill 10742 / Senate Bill 8160 would enact into law several components. The election law-related matters included in the bill can be found in:*

*Party A - concerning independent expenditures and coordination; Part B – requires segregated accounts for party committee or constituted committee housekeeping accounts; and Part C – which would require that a campaign account must be wound down within two years of the candidate or elected official's death and provides for several legitimate uses for moneys in accounts that are wound down.*

### **June Accomplishments:**

- There was no Federal Primary in June.
- Petitions were being passed for signatures in June starting June 7<sup>th</sup> (first day to sign). Forty-One voter lists were prepared for candidates so far through-out the this month.
- The Commissioners and Deputies attended a Campaign Finance seminars.
- We worked on finalizing the Inspector Training Manual with feedback from the classes.
- Amy has been attending Grand Jury Duty. She is scheduled into September.
- NCOA updates were processed with the updates to voter records carrying over into July.
- Reviewed Calendar of dates and made adjustment based on finalized Political Calendar.
- Began scheduling training dates for 2017 and reserving meeting space.

### **July Objectives:**

- Designating Petitions will be filed and reviewed July 11-14.
- File to be sent to NTS for annual Mail Check Cards. Cards will be mailed week of August 1<sup>st</sup>.
- The primary ballot will be developed this month. There is the potential for several Primary Elections as the candidates for county judge can run in any party without receiving authorization from the party.
- Develop a Ballot Marking Device training handout.
- Update the Inspector Notebooks used at each Polling Site.
- Begin calculating 2017 budget needs.
- Prepare for Election Commissioners Conference. Amy has been elected to the Executive Committee.

**Please stop by our office to discuss these topics or any others that may be of concern.  
Thank you.**

**YATES COUNTY LEGISLATURE**  
**INTER-OFFICE MEMO**

**TO:** Government Operations Committee  
**FROM:** Connie Hayes, Clerk of Legislature  
**DATE:** June 22, 2016  
**RE:** Various office updates

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Conference Update

There are a couple of things that came out of my Clerk's conference that I thought you should be aware of.

- Local Law codification – a year or so ago NYS decided that they wanted all the Legislative/Board Clerks to have the county local laws codified and sent to the state, even though our laws are sent to the state for approval and they have copies of all of them. This is very costly to have done and the majority of the Clerks. Including me, have taken the stand that this is another unfunded mandate from the state. At the conference this topic was brought up. There were a couple of counties that have codified their laws and the cost was \$15,000 to \$20,000 and will be on going as more laws are adopted or amended. We asked what the penalty was for not having this done and there is none at this time. So those of us who have not done this say we are not going to do it until the state reimburses us or there is a penalty.
- Standard Work Day Reporting Resolution – in 2010 our Governor decided that the Legislative/Board Clerks needed to start doing a resolution for retirement reporting purposes instead of the Personnel Departments. All elected and appoint officials had to be listed on this resolution who participate in the retirement system. In January of this year the State changed the form and reporting requirements. Anyone who participates in a time keeping system does not need to be listed with the exception of elected officials and a draft of the resolution has to be sent to the state before it is approved by the legislature. I have done this, the state approved it so you will see a resolution for your consideration.
- Ethics – there was a lengthy discussion on ethics and participation at meetings. Steven Leventhal, Esq., LCMBLLP who teaches a class at the Dennis A Pelletier County Government Institute on “Government Ethics in the Real World” stated that the only members that should be at the “table” in a meeting are the committee members all others should be seated with the public and treated as public. This is also what was express by Robert Freeman, Executive Director of the Committee on Open Government. This is why I express that when you are in a committee meeting you cannot poll the “legislature” as the members that are there are treated as public and if you ask for the legislature’s input it then makes the meeting an illegal meeting of the Legislature as it has not been advertised as a Legislative meeting. That being said, you could also look at it that members of the public are not allowed to participate throughout a meeting only at a

certain time. I will leave this up to you as to what, if anything you want to change but felt I needed to bring it to your attention.

### Resolutions

- Authorize Agreement with Finger Lakes Community College
- Standard Work Day and Reporting Resolution for Elected and Appointed Officials

### Discussion

I'd like to discuss minutes of committee meetings and legislative meetings. Two weeks of every month I am consumed with minutes. I'm finding it difficult to stay on top of things that I need to do, therefore some things are slipping. In addition, there are three major projects that I need to get to that are very time consuming, RFP for insurance, RFP for Office Supplies, and the 2015 Proceedings of the Legislature none of which I have started.

I looked into the Open Meetings Law and Section 106 of the law deals with minutes which I have included.

### **§106. Minutes.**

1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.
2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.
3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meeting except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session.

I am suggesting that the minutes be done with motions made and votes taken with very little of the discussion. In most cases the only discussion that I could find in some of the other counties minutes only pertained to the motion and then it was summarized. We would have to get in the habit of asking for motions on somethings that we don't right now but it would cut the time it takes to do minutes tremendously. As for discussions, if you still want some of that in there, they could be summarized in a similar manner as I did this month with the legislative minutes. If anyone wanted more detail I can always put the audio file on a CD for them.



Office of the New York State Comptroller  
 New York State and Local Retirement System  
 Employees' Retirement System  
 Police and Fire Retirement System  
 110 State Street, Albany, New York 12244-0001

# Standard Work Day and Reporting Resolution for Elected and Appointed Officials

**RS 2417-A**

(Rev. 8/15)

BE IT RESOLVED, that the Yates County Legislature / 10057 hereby establishes the following standard work days for these titles and  
 (Name of Employer) (Location Code)

will report the officials to the New York State and Local Retirement System based on their record of activities:

Title	Standard Work Day (Hrs/day) Min. 6 hrs Max. 8 hrs	Name (First and Last)	Social Security Number (Last 4 digits)	Registration Number	Tier 1 (Check only if member is in Tier 1)	Current Term Begin & End Dates (mm/dd/yy-mm/dd/yy)	Record of Activities Result*	Not Submitted (Check only if official did not submit their Record of Activities)
<b>Elected Officials</b>								
Legislator	7	Daniel Banach			<input type="checkbox"/>	1-1-16 to 12-31-17	9.24	<input type="checkbox"/>
Legislator	7	Timothy Dennis			<input type="checkbox"/>	1-1-16 to 12-31-17	9.35	<input type="checkbox"/>
Legislator	7	Mark Morris			<input type="checkbox"/>	1-1-16 to 12-31-17	10.46	<input type="checkbox"/>
<b>Appointed Officials</b>								
					<input type="checkbox"/>			<input type="checkbox"/>
					<input type="checkbox"/>			<input type="checkbox"/>
					<input type="checkbox"/>			<input type="checkbox"/>

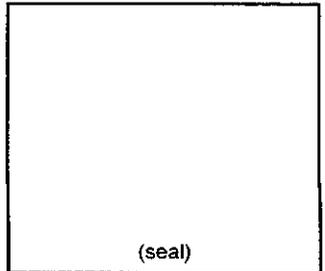
**SEE INSTRUCTIONS FOR COMPLETING FORM ON REVERSE SIDE**

I, Connie C Hayes, secretary/clerk of the governing board of the Yates County Legislature, of the State of New York,  
 (Name of secretary or clerk) (Circle one) (Name of Employer)  
 do hereby certify that I have compared the foregoing with the original resolution passed by such board at a legally convened meeting held on the 11th day of  
July, 2016 on file as part of the minutes of such meeting, and that same is a true copy thereof and the whole of such original.

**IN WITNESS WHEREOF**, I have hereunto set my hand and the seal of the Yates County Legislature on this 11th day  
 of July, 2016,  
 (Signature of the secretary or clerk) (Name of Employer)

**Affidavit of Posting:** I, Connie C Hayes, being duly sworn, deposes and says that the posting of the  
 (Name of secretary or clerk)  
 Resolution began on July 12, 2016 and continued for at least 30 days. That the Resolution was available to the public on the  
 (Date)

- Employer's website at www.yatescounty.org
- Official sign board at \_\_\_\_\_
- Main entrance secretary or clerk's office at \_\_\_\_\_





Office of the New York State Comptroller  
 New York State and Local Retirement System  
 Employees' Retirement System  
 Police and Fire Retirement System  
 110 State Street, Albany, New York 12244-0001

# Standard Work Day and Reporting Resolution for Elected and Appointed Officials Continuation Form

## RS 2417-B

(Rev. 8/15)

Title	Standard Work Day  (Hrs/day) Min. 6 hrs, Max. 8 hrs	Name  (First & Last)	Social Security Number  (Last 4 digits)	Registration Number	Tier 1 (Check only if member is in Tier 1)	Current Term Begin & End Dates  (mm/dd/yy-mm/dd/yy)	Record of Activities Result*	Not Submitted  (Check only if official did not submit their Record of Activities)
<b>Elected Officials</b>								
Legislator	7	Douglas Paddock			<input type="checkbox"/>	1-1-16 to 12-31-17	7.93	<input type="checkbox"/>
Coroner	7	Holly White			<input type="checkbox"/>	1/1/14 to 12/31/17		<input checked="" type="checkbox"/>
Treasurer	7	Winona Flynn			<input type="checkbox"/>	1/1/14 to 12/31/17	21.67	<input type="checkbox"/>
Legislator	7	Terry Button			<input type="checkbox"/>	1-1-16 to 12-31-17	2.05	<input type="checkbox"/>
Sheriff	8	Ronald Spike			<input checked="" type="checkbox"/>	1/1/16 to 12/31/19	21.67	<input type="checkbox"/>
County Clerk	7	Lois Hall			<input type="checkbox"/>	1/1/16 to 12/31/19	21.67	<input type="checkbox"/>
District Attorney	7	Valerie Gardner			<input type="checkbox"/>	1/1/14 to 12/31/17	21.67	<input type="checkbox"/>
					<input type="checkbox"/>			<input type="checkbox"/>
					<input type="checkbox"/>			<input type="checkbox"/>
					<input type="checkbox"/>			<input type="checkbox"/>
					<input type="checkbox"/>			<input type="checkbox"/>
<b>Appointed Officials</b>								
					<input type="checkbox"/>			<input type="checkbox"/>
					<input type="checkbox"/>			<input type="checkbox"/>
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**AUTHORIZE AGREEMENT WITH FINGER LAKES COMMUNITY COLLEGE**

RESOLVED, that the Chairman of the Yates County Legislature is hereby authorized to sign an agreement with the Ontario County Board of Supervisors and the Finger Lakes Community College for the offering of courses in Yates County for the 2016 – 2017 academic year, and be it further

RESOLVED, that copies of this resolution be sent to the Finger Lakes Community College, the Ontario County Board of Supervisors and the Yates County Treasurer.



# YATES COUNTY PERSONNEL DEPARTMENT

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Penn Yan, New York 14527

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Kerry M. Brennan  
Personnel Officer

Karen L. Bradley  
Personnel Assistant

## Government Ops Committee Agenda 7/5/2016

### Notifications:

- Volunteer Firefighters Assembly Bill Update
- NACO – Impact of DOL OT Rule
- County Positions Currently Recruiting For:
  - County Administrator
  - Public Health Nurse
  - Caseworker
  - Employment and Training Counselor

### Items for Discussion:

- DA Salary – refer to accompanying resolution (Amend Resolution Number 205-16 – Adopt Non-Union Salary Schedule)

### Still in Progress:

- Employee Handbook Update/Administrative Guide
- Workers Compensation Pre-Employment Physical Policy Update
- Smoke Free Campus Proposal
- Various Policy Updates
- Health Insurance:
  - New employees Insurance Policy
  - Retiree Policy
- Local Rules Update
  - Possibly adopt NYS Civil Service Model Rules
  - Need to complete a side by side comparison

### Resolutions:

- Amend Resolution Number 205-16 – Adopt Non-Union Salary Schedule
- Cancer Screening
- Volunteer Firefighters: Assembly Bill A05518 has been amended to A05518A and the proposed changes are as follows:
  - A requirement has been added so at least 5 years of service in interior firefighting for some cancer types and 10 years of service for other cancer types.
  - A limitation has been added that a claim must be filed within 12 years of separation from active service in interior firefighting.
  - The Legislative body governing the fire service can adopt a local law or resolution to elect not to provide this presumptive coverage to firefighters and fire companies.
  - More information on the assembly bill can be found at:  
[http://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A05518&term=2015&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y](http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A05518&term=2015&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y)

\*\*\*\*\*An update from Assemblyman Lator: The bill will not be going through this year as the Local Governments Committee that this would need to go through does not meet again in 2016.\*\*\*\*\*



# Analysis of the Impact of the U.S. Department of Labor's Overtime Rule on Counties

## DOL Releases Final Rule May 18, 2016

On May 18, 2016, Vice President Joe Biden, Secretary of Labor Thomas Perez and Sen. Sherrod Brown (D-Ohio) announced the U.S. Department of Labor's (DOL) final rule on overtime pay. The rule amends regulations under the Fair Labor Standards Act (FLSA) that determine which employees are eligible for overtime pay, and nearly doubles the maximum salary for overtime eligibility from \$23,660 to \$47,476. The rule will take effect on December 1, 2016 and applies to executive, administrative and professional employees – collectively referred to under FLSA as "white collar" workers.

**This change will make millions of previously ineligible employees eligible for overtime pay, and will significantly impact county governments, which are a major employer across the United States.** In fact, the nation's 3,069 counties employ more than 3.6 million people, providing services to over 308 million county residents.

While America's counties are dedicated to the goal of ensuring that all employees are compensated adequately and fairly, we are concerned that the new rule could have the unintended impact of placing additional strain on already limited county budgets throughout the country, hindering counties' ability to provide critical services to local communities. We are also concerned that the new wage threshold is more of a "one-size-fits-all" amount, rather than accounting for regional and geographic differences.

### MAJOR CHANGES

**Salary Level Threshold Change:**  
\$23,660 to \$47,476 per year

**Effective Date:** December 1, 2016

**Automatic Adjustments:** Will occur every three years with the first update to take place in 2020

**Duties Test:** The rule does not change any of the existing job duty requirements or "duties test" to qualify for exemption

County governments employ more than 3.6 million people across the country

## The Final Rule's Impact on County Governments

DOL's final rule on overtime pay will have significant impacts on counties. Doubling the current salary threshold amount all at once, rather than phasing-in the increases, could have harmful consequences on county budgets – and ultimately on county employees – particularly as counties struggle to recover

from the recession. According to the National Association of Counties' (NACo) County Economies 2015 report, only 214 county economies have fully recovered by 2015 (based on four indicators – jobs, unemployment rates, economic output (GDP) and median home prices) to their pre-recession levels.<sup>1</sup> However, even if local economies have improved, county government revenues often lag, especially property tax values.

Some counties have calculated the impact of the overtime pay change on their payroll costs and are expecting dramatic increases to payroll in the first year of implementation and beyond. For example, according to Berks County, Penn., 97 of the 419 county employees who are currently ineligible for overtime pay because of their salary levels would be newly eligible under the proposed rule. Berks County has estimated that the resulting additional financial burden could cost the county as much as \$1.5 million in the first year alone.

Payroll increases of this scale are difficult for counties to absorb because most must operate on a balanced budget and thus cannot go into fiscal deficit to meet additional overtime requirements. Further, many counties do not have the financial resources to absorb sudden spikes in pay increases without reducing current service levels, decreasing employee benefits and/or reducing their county employee work hours or staffing levels.

Increasing taxes to pay for overtime increases is not often a solution for counties, beyond the political difficulty of instituting additional taxes. In fact, 43 states impose some type of limitation on counties' ability to increase property taxes, including 38 states with statutory limitations on property tax rates, property tax assessments or both. There are not many other revenue solutions at counties' discretion. Twenty-nine (29) states allow counties to collect local option sales taxes, but in only 15 states have counties gained approval from voters to impose local option sales taxes.

Given these fiscal limitations, many counties may have to reduce the service levels for critical programs (public transportation and infrastructure, justice and public safety, public health, search and emergency rescue, and 911 operations) and cut any non-mandated services such as critical support for economic development – to comply with the new final rule.

Counties' budget cycles further complicate our ability to comply with the new rule. For almost 40 percent of counties, the fiscal year ends by June 30 and their new budgets are already in place to begin on July 1. Some counties even operate on a biennial budget, meaning their finances are set for the coming fiscal year excluding the additional costs of the new rule. Because the final rule was announced on May 18, counties have had very little time to conduct analysis and calculate the additional costs of the increased salary threshold and determine where these resources would come from.

Additionally, as is often the case with federal regulations, the new salary threshold will likely have an even greater impact on small and rural county governments. One-size-fits-all regulations like DOL's overtime rule often do not take into consideration the measurable differences – such as, in this case, differences in cost of

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<sup>1</sup> Istrate, Emilia, Brian Knudsen. County Economies 2015: Opportunities and Challenges, Washington D.C.: National Association of Counties. Available at [www.naco.org/sites/default/files/documents/2016%20CET-report\\_01.08.pdf](http://www.naco.org/sites/default/files/documents/2016%20CET-report_01.08.pdf)

living – between small and rural communities and larger population centers. Further, small and rural counties must often spend a disproportionate amount of time and money to ensure that they are in compliance with federal regulations, because they have limited human resources personnel, legal counsel and financial advisory staff.

Counties with federal land in their jurisdictions are even more limited in their ability to raise additional revenue to pay for the new overtime rule. Sixty-two percent of counties nationwide have federal land within their boundaries and in each case, those county governments provide important local services to federal public lands visitors and federal employees every day. However, once the federal government acquires land, it is removed from county tax rolls and no longer subject to local property taxes. Although the federal government has traditionally provided some relief for this lost revenue through the Payments in Lieu of Taxes (PILT) program, PILT often reimburses at a rate well below the land's taxable value per acre.

Increasing taxes to pay for overtime increases is not often a solution for counties. In fact, 43 states impose some type of limitation on counties' ability to increase property taxes, including 38 states with statutory limitations on property tax rates, property tax assessments or both.

According to the Small Business Administration's Office of Advocacy, DOL's statutorily required impact analysis on small entities was far from thorough, and DOL failed to utilize available data to take into account the wide fiscal and economic diversity of local communities across the country in determining the new salary threshold.

## Putting the Final Rule into Context: Background on the FLSA

In considering DOL's final rule on overtime pay, it is important to understand the basics of the Fair Labor Standards Act (FLSA). **Established in 1938, FLSA (P.L. 75-718) is the federal law that regulates minimum wage, overtime pay eligibility, recordkeeping and child labor standards affecting full-time and part-time workers in the private sector and within federal, state and local governments.**

Section 13(a)(1) of the FLSA exempts from the Act's minimum wage and overtime pay protections "any employee employed in a bona fide executive, administrative, or professional capacity." The exemption reflects the idea that these workers typically earn salaries well above the minimum wage, and enjoy other privileges – such as above-average fringe benefits, greater job security and better opportunities for advancement – that set them apart from workers entitled to overtime pay. The law gives the secretary of Labor the authority to define and limit the terms of the exemption.

According to DOL, FLSA regulations had become outdated, and the department set out to make revisions that would better distinguish between overtime-eligible white collar employees who Congress had originally intended to make eligible for FLSA's minimum wage and overtime provisions and those Congress had intended to exempt.

DOL's stated goal was to "ensure that white collar employees who should receive extra pay for overtime hours will do so and that the test for exemption remains up-to-date so future workers will not be denied the protections that Congress intended to afford them."

In 1938, DOL issued the first regulations that defined the scope of the white collar exemption. Since that time, the regulations that determine which white collar employees are exempt – and thus ineligible for overtime pay – generally required each of three tests to be met for the employee to be exempt:

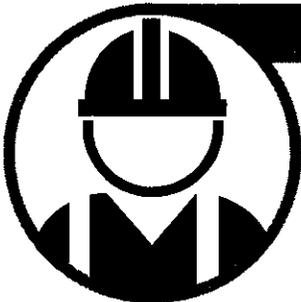
1. **The Salary Basis Test:** The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed
2. **The Salary Level Test:** The amount of salary paid must meet a minimum specified amount
3. **The Duties Test:** The employee’s job duties must primarily involve executive, administrative, or professional duties as defined by the regulations

Since FLSA was first established, DOL has updated the salary level requirements seven times, most recently in 2004, when the salary level an employee must be paid to be ineligible for overtime pay under white collar exemption was set at \$455 per week (\$23,660 per year for a full-year worker). This change nearly tripled the existing \$155 per week minimum salary level required for exemption up to that point.

On March 13, 2014, President Obama signed a Presidential Memorandum directing DOL to update the regulations defining which white collar workers are eligible for FLSA’s minimum wage and overtime standards. Specifically, the department was instructed to look for ways to modernize and simplify the regulations while ensuring that the FLSA’s intended overtime protections were fully implemented.

DOL commented on why they embarked on the rulemaking process:

“One of the department’s primary goals in this rulemaking is updating the standard salary requirement, both in light of the passage of time since 2004, and because the department has concluded that the effect of the 2004 Final Rule’s pairing of a standard duties test based on the less rigorous short duties test



## BLUE COLLAR EMPLOYEES

Eligible for overtime if:

- Always eligible for overtime
- DOL rule would not impact blue collar workers

County examples include: public works and road maintenance workers, equipment operators, parks maintenance workers, landfill operators



## WHITE COLLAR EMPLOYEES

Eligible for overtime if:

- Salary is under 23,000
- DOL rule would increase the maximum eligible salary to 47,000

County examples include: accountants, engineers, information system managers

with the kind of low salary level previously associated with the more rigorous long duties test was to exempt from overtime many lower paid workers who performed little EAP work and whose work was otherwise indistinguishable from their overtime eligible colleagues. This has resulted in the inappropriate classification of employees as EAP exempt — that is overtime exempt — who pass the standard duties test but would have failed the long duties test. As the department noted in our proposal, the salary level’s function in helping to differentiate overtime-eligible employees from employees who may be exempt takes on greater importance when the duties test does not include a specific limit on the amount of nonexempt work that an exempt employee may perform.”

## Getting Into Specifics—New Salary Threshold and Automatic Updates

In DOL’s Notice of Proposed Rulemaking (NPRM) that preceded the 2016 final rule, DOL had initially proposed setting the standard salary level at \$50,000 per year. **However in the final rule, the agency decided to raise the standard minimum level for salaried, exempt workers from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year).** The new level is pegged to the 40th percentile of weekly earnings for full-time salaried workers from the lowest wage Census region in the country (currently the South). The South Census region includes Alabama, Arkansas, Delaware, the District of Columbia, Georgia, Florida, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia. In total, according to DOL, the rule will affect an estimated 4.2 million workers across the U.S. who are currently exempt from the overtime pay requirements but will be newly eligible under the increased threshold.

The final rule also raises the compensation level for highly compensated employees (subject to less-stringent duties tests) from the previous amount of \$100,000 to \$134,004 annually. That rate was established to match the 90th percentile of annual earnings of full-time salaried workers nationally. According to DOL, employers are permitted to satisfy up to 10 percent of the standard salary requirement with nondiscretionary bonuses, incentive payments and commissions, provided these forms of compensation are paid at least quarterly.

While it is encouraging that the rule attempted to take into account regional variations, using Census regions to determine the salary level is too broad and does not provide an accurate picture of the major differences in labor markets across local communities.

Consider local government average wages by state. Based on data from the Bureau of Labor Statistics, in 2015, the average annual wages paid by local governments nationally ranged from \$62,482 in Hawaii to \$32,911 in South Dakota. In 34 of the 50 states, local government employees earned less than \$46,000—which is less than the new DOL salary threshold. The situation is even more uneven at the local level. In 85 percent of counties, local governments do not meet the new salary threshold of \$47,476. For example, in Decatur County, Kansas the current average wage in local government is \$18,465. In 97 percent of counties in the South Census region, average wages in local government are less than the newly proposed threshold.

As mentioned previously, the final rule does not change any of the existing job duty requirements, or duties tests, that determine which employees are exempt from overtime pay requirements. That said, the existing duties tests will be relevant to a much smaller number of employees, because all employees earning less than \$913 per week will automatically qualify for overtime pay under the final rule. The test will still be relevant in

According to DOL, the rule will affect an estimated 4.2 million workers across the U.S. who are currently exempt from DOL's overtime pay requirements but will be newly eligible under the increased threshold.

determining whether those employees who earn more \$913 or more per week qualify for overtime pay.

**The final rule also provides for an automatic update of salary levels every three years, rather than for annual updates as initially proposed.** The automatic update will seek to maintain a salary threshold equal to the 40th percentile of weekly earnings of full-time salaried workers. Under the final rule, the first automatic update will take effect on January 1, 2020, and DOL will publish all updated rates in the "Federal Register" at least 150 days before their effective date.

In response to comments expressing concern about the financial and administrative burdens connected with updating the salary threshold on an annual basis, DOL adopted a new fixed percentile approach to automatic updating, changed the updating frequency from annually to every three years and increased the period between announcing the

updated salary level and effective date of the update from 60 days to 150 days.

There has been much disagreement over whether DOL has the authority to establish an automatic updating mechanism through the rulemaking process – without congressional approval. DOL argues that although the FLSA does not explicitly reference automatic updating, the original law gave the secretary of Labor the broad authority to define and delimit its exemptions.

## Options for Employers to Implement the Updated Salary Level Requirements

According to DOL, state and local government employers have discretion to choose between several options for complying with the final rule. **It is important to note that the law does not require that newly overtime-eligible employees be converted to hourly pay status.**

- **Raise salaries:** For workers whose salaries are close to the new threshold and who would otherwise be exempt from overtime pay under the duties test, employers may choose to raise these workers' salaries to meet the new threshold and maintain their exempt status.
- **Pay overtime above a salary:** State and local government employers can continue to pay newly-eligible employees their existing salary, and in addition, pay these employees for overtime hours.
- **Evaluate and realign employee workload:** Employers can limit the need for employees to work overtime by ensuring that workloads are distributed to reduce overtime, that staffing levels are appropriate for the workload, and that workers are managing their time well.
- **Utilize "comp" time:** State and local government employers – unlike private sector employers – can provide compensatory time off – or "comp time" – rather than cash overtime payments in appropriate circumstances.

**Although the final rule provides specific guidance for how state and local government agencies can arrange for their employees to earn "comp time" instead of cash payment for overtime hours, it is important to note that comp time is not a budget neutral alternative.** Any "comp time" arrangement must be established according to a collective bargaining agreement, memorandum of understanding, any other

agreement between the public agency and representatives of overtime-protected employees or an agreement or understanding arrived at between the employer and employee before the performance of the work. This agreement can be demonstrated by a notice to the employee that comp time will be given in lieu of overtime pay (for example, providing the employee a copy of the personnel regulations). **The comp time must be provided at a rate of one-and one-half hours for each overtime hour worked.**

## Certain Local Government Employees Will Not Be Affected by the Final Rule

According to DOL, there are several groups of state and local government employees that will not be affected by the final rule:

- **Hourly workers:** The new salary threshold will have no impact on the pay of workers paid hourly. Generally, all hourly workers — including those employed by state and local government — are entitled to overtime pay or comp time regardless of how much they make if they work more than 40 hours. Nothing in the new rule changes that.
- **Workers with regular workweeks of 40 or fewer hours:** To the extent that many salaried white-collar staff in state and local government have office jobs where they work no more than 40 hours, the changes to the overtime rules will have no effect on their pay. Additionally, for law enforcement and fire protection employees who regularly work hours that conform to the longer work periods permitted for such employees, the changes will also not impact their pay.
- **Workers who fail the duties test:** Salaried workers who do not primarily perform executive, administrative, or professional duties fail the duties test and are therefore already eligible for overtime pay and not affected by the final rule. Those employees already should be getting paid overtime for any hours they work over 40 in one week (or the applicable work period maximum for fire protection and law enforcement employees), as long as comp time is not available.
- **Highly compensated workers:** White collar workers who earn more than \$134,004 in a year are almost always ineligible for overtime under the highly compensated employee exemption, which has a minimal duties test. Some high-level managers in state and local government could still qualify for overtime under this test.
- **Police and fire employees in small agencies:** Fire protection or law enforcement employees in public agencies with fewer than five fire protection or law enforcement employees respectively will continue to be exempt from overtime.
  - **“Work periods” rather than “workweeks” for fire protection or law enforcement employees:** Employees engaged in fire protection or law enforcement may be paid overtime on a “work period” basis, rather than the usual 40-hour workweek of the FLSA. A “work period” may be from 7 consecutive days to 28 consecutive days in

Although the Final Rule provides specific guidance for how state and local government agencies can arrange for their employees to earn comp time instead of cash payment for overtime hours, it is important to note that comp time is not a budget neutral alternative.

length. Overtime compensation is required when an employee's hours worked in the work period exceed the maximum hours outlined in a formula in the Department's regulations. For example, for a law enforcement employee who works a 14-day work period, the department's regulations provide that the individual must receive overtime compensation after working 86 hours in the work period.

- **Elected officials, their policymaking appointees, and their personal staff and legal advisors who are not subject to civil service laws:** These state and local government employees are not covered by the FLSA and will not be impacted by the rule.
- **Legislative branch employees who are not subject to civil service laws:** These state and local government employees are not covered by the FLSA and will not be impacted by the rule.
- **Public employees who have a comp time arrangement:** Public sector employers can satisfy their overtime obligation by providing comp time rather than paying a cash overtime premium. State and local government employers may continue to use comp time to satisfy their overtime obligations to employees who have not accrued the maximum number of comp time hours.

## The Small Business Administration's Office of Advocacy Weighs In—The Overtime Rule Will Significantly Impact Small and Rural Counties

The Final Rule will significantly impact small counties and small businesses in rural areas. The majority of counties, almost 70 percent, are considered rural and have fewer than 50,000 residents. These counties in particular have voiced concerns that this rule could have adverse impacts on their county finances as well as their county employees' work hours and benefits.

Rural counties across the country employ over 410,000 full-time employees who collectively serve almost 40 million Americans. Often, these small counties deliver services over expansive areas, sometimes larger than the size of some states; the average county employee in Western states serves an area of 21 square miles.

The U.S. Small Business Administration's Office of Advocacy — which represents the views of small entities before federal agencies and Congress — presented DOL with serious concerns about how the Final Rule will impact small businesses and also local governments with populations 50,000 or below.

When a new federal regulation is expected to have a significant economic impact on a substantial number of small entities (including small local governments), federal agencies are required by the Regulatory Flexibility Act to assess the impact of the proposed rule on these entities and consider less burdensome alternatives.

By law, federal agencies are required to give "every appropriate consideration" to comments provided by SBA's Office of Advocacy when issuing new regulations and are required to prepare an Initial Regulatory Flexibility Analysis (IRFA). An IRFA must contain:

- A description of the reasons why the regulatory action is being taken
- The objectives and legal basis for the proposed regulation
- A description and estimated number of the regulated small entities
- A description and estimate of compliance requirements

- Identification of duplication, overlap and conflict with other rules and regulations
- A description of significant alternatives to the rule

In official comments submitted on September 4, 2015, the Office of Advocacy stated that DOL's IRFA "does not properly inform the public about the impact of this rule on small entities" and questioned the agency's analysis as it "relies on multiple unsupported assumptions regarding the number of affected small businesses and workers and by extension the regulatory impact of this proposal."

According to the Office of Advocacy, DOL's IRFA analyzed small businesses and counties very broadly, and ultimately failed to take into account varying economic impacts. Specifically, they cited DOL's failure to provide adequate analysis of the economic impact on governmental jurisdictions serving populations of 50,000 or less, regional differences and wage disparities across the country and the number of small businesses and counties affected by the final rule. In addition, the Office of Advocacy determined that the proposed alternative of comp time for state and local governments to help them comply with the rule is not a valid alternative.

The Final Rule will significantly impact small counties and small businesses in rural areas. The majority of counties, almost 70 percent, are considered rural and have fewer than 50,000 residents. These counties in particular have voiced concerns that this rule could have adverse impacts on their county finances as well as their county employees' work hours and benefits.

## The Office of Advocacy detailed several issues with DOL's Initial Regulatory Flexibility Analysis:

- **DOL provided an inadequate analysis of the number of small entities affected:** According to the Office of Advocacy, DOL made key determinations that unnecessarily "obscure the numbers of affected small businesses in industry subsectors and revenue size categories." The office further stated that DOL "made assumptions to create hypothetical data points that were otherwise easily available in the [Census' Survey of U.S. Businesses (SUSB)] data." Specifically, the agency chose to use very general industry codes when more specific codes were readily available and could have aided in a more thorough and accurate analysis of the number of small entities that would be affected by the final rule. This is significant because different sized entities may be classified under the same general industry code. The Office of Advocacy recommended that DOL use these more specific, readily-available data points — instead of general assertions — to improve the transparency and accuracy of its economic analysis.
- **DOL provided inadequate analysis on the economic impact on small local governments:** According to the Office of Advocacy, DOL did not adequately analyze the economic impact on small governmental jurisdictions serving a population of less than 50,000 — despite this being required by law. After holding a series of roundtable discussions with small entities on the potential implications of the final rule, the office noted that representatives from small entities, including counties, voiced concern that their "operations would have a difficult time complying with these regulations because they do not have the discretionary resources to pay for these extra costs" and that they may need to cut critical services as these job positions become too costly for their limited budgets.

Salaried workers often work flexible schedules by utilizing cell phones and logging onto work at computers from home—and employers will now be more likely to stop these types of work agreements.

- **DOL provided inadequate analysis of local wage differences:** DOL's Notice of Proposed Rulemaking (NPRM) initially proposed setting the standard salary level at \$50,440 per year. However, in response to comments stating the department's proposal did not account for regional differences in wages, DOL decided to lower the standard minimum level for salaried, exempt workers to \$47,476 per year. The agency justified their decision in determining the new salary threshold stating, "The department is setting the salary level at the 40th percentile of weekly earnings of full-time salaried employees in the lowest-wage Census Region (as opposed to nationally) in part to account for low-wage employers," including small businesses and counties. While DOL states that the new salary threshold accounts for regional differences, there are still limitations in their analysis. For example, a study conducted by the National Retail Federation and Oxford Economics found wide differences in what constitutes the 40th percentile in three states from the lowest-wage Census Region: Kentucky (\$882/week), Louisiana (\$784/week) and the District of Columbia (\$1,070/week). The Office of Advocacy asserts that DOL could have also analyzed this state data by other factors, including the impact on industry sub-sectors. Although the new rule attempts to account for low-wage employers and regional differences in wages, it is clear that this rule will still have vastly different impacts in terms of the number of small counties affected.

- **DOL's analysis underestimates small entities' compliance costs:** When performing their analysis, DOL underestimated the human resource and financial management costs on small entities that will result from the Final Rule. DOL estimates that on average, an affected small "establishment" is expected to incur \$100 to \$600 in direct management costs, a one-hour burden for regulatory familiarization (reading and implementing the rule), a one-hour burden per each affected worker in adjustment costs, and a five-minute burden per week scheduling and monitoring each affected worker. The Office of Advocacy states concerns that these estimates may not reflect the actual experiences of small entities — as they typically spend a disproportionately higher amount of time and money on compliance because they have limited human resources personnel, legal counsel or financial advisory staff. Many small businesses may adjust by hiring outside consultants to help them comply with these types of regulations, which can cost thousands of dollars.
- **DOL does not account for non-financial costs to small entities:** As it conducted roundtable discussions with small entities prior to the rule's finalization, the Office of Advocacy heard many concerns over the potential for several non-financial costs on small entities. Salaried workers often work flexible schedules by utilizing cell phones and logging onto work at computers from home—and employers will now be more likely to stop these types of work agreements. Similarly, employers stated that they would try to limit travel for work. Further, small entities also commented that they may not be able to hire as many entry-level management positions, and their senior managers would absorb many of these job responsibilities.
- **DOL did not consider less burdensome alternatives that would still accomplish the agency's objectives:** According to the Office of Advocacy, DOL's initial analysis (IRFA) did not contain the required regulatory alternatives that would minimize the economic impact of the rule for small entities. In the final rule, DOL asserts that it does not provide any differing compliance or reporting requirements for small businesses because "it appears to not be necessary given the

small annualized cost of the rule, estimated to range from a minimum of \$400 to a maximum of \$3,300.” The Office of Advocacy believes that DOL’s numbers of small entities affected and costs estimates are extremely low and recommends that the agency reassess the impact through a Supplemental Initial Regulatory Flexibility Analysis. Further, the office suggests that DOL consider the following alternatives to better reduce the burden on small entities:

1. DOL should consider a salary threshold that is adjusted to reflect regional wages and wages in certain occupations.
2. DOL should consider allowing small entities to have a longer time to implement the final rule (more than the given four months) – giving them more time to understand the rule, evaluate and reclassify their workforce, and plan their budget and raise funding to play for the compliance costs of the regulation.
3. DOL should consider a gradual increase in the salary threshold for small entities – so as to minimize the sudden cost increase.

## Conclusion

While NACo supports the overall goal of providing fair, reasonable living wages, we remain concerned with the lack of local government consultation and insufficient analysis conducted by DOL on a rule that could have significant and detrimental impacts on local governments and the communities they serve. NACo will continue to monitor the implementation process of DOL’s final overtime rule and further detail the impact on counties across the country.

## Resources:

- [NACo’s Official Comments on DOL’s Proposed Rule on Overtime Pay](#)
- [NACo’s Overview of DOL’s Proposed Rule on Overtime Pay](#)
- [DOL’s Fact Sheet on the Final Rule](#)
- [DOL’s Overview of the Final Rule](#)
- [DOL’s Webinar for Information on the Final Rule](#)
- [State and Local Governments and the Final Rule](#)

For questions, contact: Deborah Cox, NACo Legislative Director at 202.942.4286 or [dcox@naco.org](mailto:dcox@naco.org).

For press question, contact: David Jackson, NACo Communications Director at 202.942.4271 or [djackson@naco.org](mailto:djackson@naco.org).



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**AMEND RESOLUTION NUMBER 205-16  
ADOPT 2016 NON-UNION SALARY SCHEDULE**

WHEREAS, on December 24<sup>th</sup>, 2015, the New York State Commission on legislative, Judicial, and Executive Compensation voted to recommend increasing all state judge salaries in 2016 and 2018, and on April 1, 2016 the State approved the Commission's recommendation and subsequently State Judicial Law 183-a links judicial salaries with county district attorneys' salaries requiring DA salaries to be equal or higher than either the County Court Judge, depending on full or part-time status, and

WHEREAS, effective July 13<sup>th</sup>, 2016 the Personnel Officer has successfully completed her 52 week probationary period and as a condition of the employment arrangement her annual salary is increased from \$64,000 to \$65,000, and

NOW THEREFORE BE IT RESOLVED, that effective July 11<sup>th</sup>, 2016 the Yates County Legislature approves the Yates County District Attorney's salary be increased from \$152,500 to \$183,350 and paid retroactively to April 1, 2016 and effective July 13<sup>th</sup>, 2016 the Personnel Officer's salary be increased to \$65,000, and be it further

RESOLVED, that effective July 11<sup>th</sup>, 2016 the Yates County Legislature hereby amends Resolution 205-16 and replaces it with the subsequent resolution, and

**ADOPT 2016 NON-UNION SALARY SCHEDULE**

<b><u>Elected Officials</u></b>	<b><u>Annual</u></b>
County Clerk	\$63,038
County Treasurer	\$70,979
District Attorney	\$183,350
Legislators (14 at \$8,183 each)	\$114,562
Legislature Chairman	\$8,183
Sheriff	\$92,651

<b><u>Full-Time/Part-Time</u></b>	<b><u>Annual</u></b>
Assistant District Attorney (DM)	\$36,414
Assistant District Attorney (LT)	\$66,362
Assistant Public Defender (KL)	\$41,860
Assistant Public Defender (KM)	\$34,333
Budget Officer	\$9,286
Building Maintenance Supervisor	\$56,828
Clerk, County Legislature	\$52,842
Commissioner of Social Services	\$64,946
Confidential Assistant to Sheriff	\$41,134
Conflict Defender	\$45,900
County Administrator	\$99,491

County Attorney	\$90,606
Deputy County Clerk	\$37,000
Deputy County Treasurer	\$47,754
Deputy Highway Superintendent	\$61,551
Director of Children and Family Services	\$57,370
Director of Community Services	\$71,400
Director of Emergency Management	\$63,864
Director of Income Maintenance & Child Support	\$57,370
Director of Patient Services/Public Health	\$69,179
Director of Real Property Tax Services	\$67,092
Director of Veteran Services Agency	\$46,818
Election Commissioner (D)	\$38,679
Election Commissioner (R)	\$38,679
Highway Superintendent	\$79,365
Information Technology Director	\$71,767
Personnel Assistant	\$36,720
Personnel Officer	\$65,000
Planner	\$67,092
Probation Director	\$61,466
Public Defender	\$72,076
Secretary to District Attorney	\$35,307
Social Services Attorney	\$61,901
Supervising Public Health Nurse	\$60,090
Undersheriff	\$72,733

and be it further

RESOLVED, that a copy of this resolution be given to the Personnel Officer, District Attorney, County Attorney and Treasurer.

**ADOPT POLICY AND PROCEDURE ON CANCER SCREENING AND ABOLISH ALL PRE  
EXISTING CANCER SCREENING POLICIES**

RESOLVED, that effective July 11<sup>th</sup>, 2016 the Policy and Procedure on Cancer Screening is hereby adopted and shall be added to the Yates County Employee Handbook and all pre-existing policies and resolutions be abolished, and be it further

RESOLVED, that a copy of this resolution be forwarded to all department heads, and the respective President for each current County Collective Bargaining Unit.

**YATES COUNTY  
POLICY AND PROCEDURE ON CANCER SCREENING**

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**I. PURPOSE:**

Some types of cancer can be discovered before they cause symptoms. Checking for cancer (or for conditions that may lead to cancer) in people who have no symptoms is called screening. Screening can help health care providers discover and treat some types of cancer early in their clinical course. Generally, cancer treatment is more effective when the condition is found early. However, not all types of cancer have screening tests and some tests are only recommended for people with specific genetic risks or other risk factors. Research has shown that detection of certain types of cancer through regular use of certain specific screening tests can help reduce cancer mortality. For other types of cancer, screening tests are in use or being studied, but the test's ability to reduce cancer mortality has not been established.

**II. AUTHORITY:**

Centers for Disease Control and Prevention (CDC), specifically the U.S. Preventative Services Task Force. NYS Department of Civil Service; Legislation enacted in August 2002 (Chapter 362, Laws of 2002) amended the Civil Service Law to add section 159-b, NYS Department of Civil Service; Legislation enacted in July 2004 (Chapter 237, Laws of 2004) amended the Civil Service Law to add Section 159-c. NYS Department of Civil Service; Senate Bill S2069A Section I amends Civil Service Law §159-b.

**III. SCOPE:**

This policy applies to all full time Yates County employees.

**IV. POLICY:**

Full time employees of Yates County are entitled to take up to eight (8) hours of paid leave each calendar year, for the purpose of cancer screening scheduled during the employees' regular work hours.

- Cancer screening includes physical exams, and subsequent follow-up visits, for the detection of cancer;
- Travel time is included in this eight (8) hour cap;

- Employees who undergo screenings outside their regular work schedule do so on their own time;
- Absence beyond the eight (8) hour cap must be charged to leave credits, or be unpaid (employees are granted compensatory time off for cancer screenings that occur on a day off or a holiday);
- Leave for cancer screening is not cumulative and expires at the close of business on the last day of each calendar year.
- Yates County employees must comply with Yates County, Department, and applicable Collective Bargaining Agreement leave policies and practices, and follow the customary leave procedures for their office/department. Failure to follow the proper procedures may result in disciplinary action.

**V. PROCEDURE:**

- 1) An employee must submit a leave request in accordance to their office/departments policies. The leave request must clearly indicate that the requested time off is for the purpose of cancer screening. Failure to follow the proper procedure may result in a charge to accrued leave credits.
- 2) On the next business day following the date of the cancer screening the employee is required to provide satisfactory medical documentation that the absence was for the purpose of cancer screening. Failure to provide appropriate documentation may result in a charge to accrued leave credits.