Includes February

# SUMMARY OF

# 2000

# REAL PROPERTY TAX LEGISLATION


**STATE BOARD OF REAL PROPERTY SERVICES**

**Ifigenia T. Brown, Chairwoman**
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**STATE OF NEW YORK**

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**Sheridan Hollow Plaza, 16 Sheridan Avenue, Albany, New York 12210-2714**

# SUMMARY OF 2000 REAL PROPERTY TAX LEGISLATION

NEW YORK STATE BOARD OF REAL PROPERTY SERVICES

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September, 2000

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ACKNOWLEDGMENTS

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Special thanks are due to Paul Miller and Karen Delduce for their efforts in continually monitoring the status of legislation of interest throughout the legislative session, and to Lynn Miller for her ongoing contributions to the process.

# SUMMARY OF 2000 REAL PROPERTY TAX LEGISLATION

This publication provides a summary of legislation enacted in 2000 relating to real property tax administration. The descriptions it contains are intended only as a source of general information about the major features of these new laws. For a more detailed and authoritative account of what these new laws do, the best resource is, of course, the laws themselves.

The following new laws may be of particular interest:



All statutory citations herein are to the Real Property Tax Law (RPTL), unless otherwise noted. The terms "State Board" and "ORPS" as used herein refer to the New York State Board of Real Property Services and Office of Real Property Services, respectively. It may generally be assumed that the laws described herein are now in effect and applicable, unless otherwise noted.

For those with Internet access, this Summary is also available through the ORPS website. The laws summarized herein may be accessed through the State Senate website or the State Assembly website.

As of this writing, there were a few bills of interest which had passed both houses of the Legislature but were still awaiting transmittal to or action by the Governor, as indicated on the Legislative Status Chart (Section VI of this Summary). At the conclusion of this process, an Addendum to this Summary will be prepared and posted on our website, with hard copies provided to interested parties upon request. (Since the outstanding bills would have little or no direct impact upon real property tax administration, a mass mailing of the Addendum is not planned at this time.)


Questions or comments may be directed to the New York State Office of Real Property Services, Office of Counsel, 16 Sheridan Avenue, Albany, New York 12210-2714; telephone number (518) 474-8821, fax (518) 474-3657.



September, 2000

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* The numbers in brackets are Chapter numbers.

## I. ASSESSMENT ADMINISTRATION

### Tax Apportionment

Utility Divestiture

Chapter 191 modifies the procedures for apportioning the 2000-01 school tax levy and the 2001 county tax levy in certain cases, so as to avoid tax shifts to or from assessing units which contain electric generating facilities. Such shifts were expected because, due to the restructuring of the electric utility industry, a market has developed for facilities that generate electricity. This has significantly impacted the market values of these facilities in some cases, which has affected the overall full values of the communities in which they are located. These changes are reflected in the State equalization rates for 1999 assessment rolls and certain 2000 assessment rolls, which would ordinarily lead to a redistribution of the tax burden within the affected school districts, all other things being equal.

Under this legislation, however, the State equalization rates that reflect these impacts will not be used to determine the affected city or town's full value when apportioning the 2000-01 school tax levy. Instead, a special equalization rate will be established specifically for purposes of that apportionment. This special rate will equal the city or town's regular equalization rate, except that an adjustment will be made to neutralize the effect of divestiture upon the value of the power plant, essentially by "freezing" the assessment ratio that applied to the plant during the prior rate cycle. These special rates will also be used in the determination of county equalization rates by the State Board (RPTL, Art. 8, Title 2). As a result, the developing market for these facilities will not influence the 2000-01 school tax levy or the 2001 county tax levy. (Normal shifts in tax shares, driven by factors unrelated to divestiture, may still occur.) Future levies are not impacted by this legislation.

Not every assessing unit with a generating facility will receive a special rate under this legislation. Special rates will not be issued where the special rate would differ from the 1999 state equalization rate by less than two percent, or when it appears to the satisfaction of the State Board that the assessing unit appraised the facility in a manner consistent with the State Board's methodology when preparing its 2000 assessment roll. ORPS has already notified the assessing units and school districts that are directly affected by this legislation.

Revaluations

Chapter 248 provides that when a revaluation or update is implemented at 100 percent of current value, ORPS may establish a special equalization rate of 100 for that assessment roll for school tax apportionment purposes, and adjust the latest State equalization rates of the other cities or towns in the same school district to current value (RPTL, §1314). Prior to this legislation, the uniform percentage of 100 had to be trended

backwards to conform to the Statewide full value standard, which made it virtually impossible to apply a rate of 100 for apportionment purposes.

In addition, this legislation broadens the certified school district program (RPTL, §1315) by providing that a school district may be certified when two or more cities and/or towns in a school district have been determined by the State Board to have completed revaluations or updates at the same uniform percentage of value on any of the three latest assessment rolls. In such cases, the school district will apportion its taxes among those cities and towns on the basis of assessed value, without using equalization rates. Previously, in order to be certified, the valuation date of the reassessments had to be at least as current as the valuation date of the otherwise applicable equalization rates. This requirement had become increasingly restrictive as the State Board's rates became more current.

This legislation applies to assessment rolls based upon taxable status dates occurring on and after January 2, 2001. The provisions relating to the certified school district program expire on January 1, 2004, so as to allow assessing units to complete existing or planned cycles and to prepare for annual reassessments.

## Oil and Gas Program

Fee Extender

Chapter 17 extends by three years – to March 31, 2003 – the effectiveness of section 593 of the RPTL, which requires oil and gas producers to pay a portion of the cost of the oil and gas assessment program administered by ORPS pursuant to Title 5 of Article 5 of the RPTL (§§590-597), based on a fee schedule. When section 593 was enacted in 1992 (c.540), the authorization for this charge was originally scheduled to expire on March 31, 1997, but the authorization was then extended for three years to March 31, 2000 (L.1997, c.35) and has now been extended for another three years.

## Taxable State Land

City of Albany

Chapter 56, a comprehensive finance-related Budget Bill, includes provisions that establish a State aid program for the City of Albany on account of the State office building complex commonly known as the South Mall or Empire State Plaza (Part F). The aid is generally based upon the acquisition cost of the land in question and the construction cost of the buildings thereon, but it may not exceed $4.5 million per year in State fiscal years 2000-01 through 2004-05, inclusive, or $10 million per year in State fiscal years 2005-06 through 2029-2030, inclusive (Public Lands Law, §19-a(2-a)).

Town of Montague

Chapter 426 makes State lands used for fish hatchery, reforestation or various wild game purposes in the Town of Montague, Lewis County taxable for all purposes (RPTL, §532(g)). With this addition, section 532(g) will apply to 21 towns in 10 counties. This legislation applies to assessment rolls based on taxable status dates occurring on and after January 1, 2001.

Tug Hill

Chapter 225 makes a technical correction to 1998 legislation (c.419) which provided that conservation easements held by the State in the Tug Hill region were subject to taxation (RPTL, §533). The amendment simply recognizes that the definition of the Tug Hill region was moved from an unconsolidated law (L.1992, c.561) to a consolidated law (Executive Law, Article 37) by another 1998 enactment (c.440).

**Technical Corrections**

Chapter 144 generally makes a series of technical corrections to the RPTL and related statutes. In particular, it:

< Amends RPTL §330, which relates to local laws involving the position of assessor, to recognize that under the subsequently-enacted §329, a local law providing for a sole elected assessor is subject to a permissive referendum;

< Amends RPTL, §§458-a and 485-b, the alternative veterans and business investment exemptions respectively, to clarify the operation of those statutes in certain respects, as discussed below (pp. 5 and 10).

< Amends RPTL §550 to provide that administrative errors involving relevied village taxes (i.e., unpaid village taxes which have been turned over to the county for enforcement) may be corrected in accordance with the procedures that currently apply to relevied school taxes;

< Amends several sections of the RPTL (i.e., §§557, 720, 845 and 1315) to conform to the new definitions of "reassessment," "revaluation" and "update" brought about by L.1998, c.319;

< Amends RPTL §953, which relates to the administration of real property tax escrow accounts, to include a cross reference to the fact that section 254 of the Real Property Law prohibits the imposition of fees upon mortgagors whose mortgage agreements allow them to pay their taxes directly, rather than through escrow accounts; and

< Amends Article 25-AA of the Agriculture and Markets Law, which establishes the Agricultural Districts Program, to eliminate the requirement that ORPS adopt rules relating to the reporting of conversion payments, and to require that the reports pertaining to those payments be filed with ORPS within 45 days after the filing of the final roll (as had already been required by ORPS rules).

## II. EXEMPTION ADMINISTRATION

### Economic Development

Movable Machinery and Equipment

Chapter 63, a comprehensive tax-related Budget Bill, contains a series of provisions that restructure State taxes on utility companies (Part Y). Included among them is a section that affects the taxable status of certain machinery and equipment owned, or formerly owned, by a utility company (Part Y, §42). It provides essentially that where either the enactment of Chapter 63 or a change of ownership would otherwise render such property wholly exempt from taxation pursuant to section 102(12)(f) of the RPTL, the exemption shall be phased in over a 10 year period, rather than being implemented immediately in full.

Though often overlooked, section 102(12)(f) of the RPTL generally provides a real property tax exemption for *movable* machinery and equipment that is (a) owned by a so-called "9-A corporation" (i.e., a corporation which is taxable under Article 9-A of the Tax Law), (b) used for trade or manufacture, (c) not essential for the support of a building or structure, and (d) can be removed without material injury to the building or structure. Prior to Chapter 63, this exemption had not been relevant to utility companies, because they had been taxable under Article 9, rather than Article 9-A, of the Tax Law. However, as a consequence of the provisions of Chapter 63, utility companies have now joined the ranks of 9-A corporations, so their qualifying property is now potentially exempt from taxation, subject to the phase-in. The same is true for qualifying property which has been transferred from a utility to a non-utility company as part of the divestiture process.

The impact upon local property tax bases is more limited than it might initially appear, however, because movable machinery and equipment is not exempt under section 102(12)(f) if it falls within one or more of the following categories: "Boilers, ventilating apparatus, elevators, plumbing, heating, lighting and power generating apparatus, shafting other than counter- shafting and equipment for the distribution of heat, light, power, gases and liquids." Thus, for example, power generating apparatus will remain fully taxable under section 102(12)(f) even if it is movable (see, e.g., 5 Op.Counsel SBEA No. 59).

To the extent that Chapter 63 does apply to formerly taxable utility property, the exemption is to be phased in as follows:

| Final Assessment Roll | Exemption Percentage |
|---|---|
| 2001 | 0 |
| 2002 | 10 |
| 2003 | 20 |
| 2004 | 30 |
| 2005 | 40 |
| 2006 | 50 |
| 2007 | 60 |
| 2008 | 70 |
| 2009 | 80 |
| 2010 | 90 |

Empire Zones

Chapter 63, discussed immediately above, also includes a series of provisions which establish an Empire Zones Program (Part GG). That program includes a 15-year credit against certain State taxes for real property taxes which are paid by "qualified empire zone enterprises" (Tax Law, §§15, 201(27), 606(bb), 1456(o), 1511(r), as added by Part GG, §§2, 3, 5, 6 and 7). The size of the credit will depend upon the enterprises's taxable year, its employment increase, and the real property taxes it paid. Note that this is a State tax credit, not a real property tax exemption, and will be administered by the Department of Taxation and Finance, not by local assessors.

Chapter 63 further directs that the term "Economic Development Zone" be changed to "Empire Zone" wherever it appears in the law (Part GG, §15). Accordingly, the program previously known as the Economic Development Zones Program (General Municipal Law, Article 18-B) should now be referred to as the Empire Zones Program, and the exemption previously known as the Economic Development Zone Exemption (RPTL, §485-e) should now be referred to as the Empire Zone Exemption.

Economic Development Zones

Chapter 41 corrects certain technical defects in Chapter 462 of the Laws of 1999, which authorized the designation of six additional Economic Development Zones (General Municipal Law, §§958(d), 960(b)(vi)). When signing Chapter 462 last year, the Governor issued an Approval Message (#8) calling for such corrections to be made. Note that by virtue of Chapter 63, discussed above, this program is now known as the Empire Zones Program.

Business Investment Exemption

Chapter 144, the "technical corrections" legislation discussed above (p.3), includes a provision that amends the business investment exemption (RPTL, §485-b) for those municipalities that choose to target the exemption to specific types of businesses. The

amendment recognizes that a publication referred to in the statute (i.e., the *Standard Industrial Classification Manual* published by the United States Government) has been replaced by a new publication (i.e., the *North American Industry Classification System*).

New York City Revitalization Plan

Chapter 261 expands a number of existing business tax incentive programs that apply only in New York City, so as to encourage businesses to relocate to, or expand in, suitably zoned areas, excepting the portion of Manhattan south of 96th Street. The provisions that relate directly to real property tax administration generally broaden the scope of the Industrial and Commercial Incentive Program (RPTL, Article 4, Title 2-D), the Commercial Tax Abatement Program (Article 4, Title 4-A), and the Multiple Dwelling Exemption Program (§421-g) in the targeted areas.

Urban Development Action Areas

Chapter 437 clarifies and expands the criteria for including property in the Urban Development Action Area Program (General Municipal Law, §§690-698). Projects built within designated areas may be eligible for certain loans under the program, and may be exempt from taxation at local option (GML, §696).

**Living Quarters for Parents or Grandparents (New Exemption)**

Chapter 377 authorizes counties, cities, towns, and villages to adopt local laws, and school districts to adopt resolutions, providing for an exemption for the increase in value to residential property for the construction or reconstruction of living quarters for a parent or grandparent who is at least 62 years of age (RPTL, §469). The exemption, which applies to taxes and special ad valorem levies, is limited to the lesser of (a) the increase in the assessed value attributable to the new construction or reconstruction, (b) 20 percent of the total assessed value of the property, or (c) 20 percent of the median sale price of residential property in the county. In addition, (d) the property must be within a geographic area in which such construction is permitted, and (e) the property must be the owner's principal residence. If the parent or grandparent ceases to use the property as his or her primary place of residence, the exemption ends. This legislation applies to assessment rolls based on taxable status dates occurring on and after January 1, 2001.

**Persons with Disabilities and Limited Incomes**

Income Ceiling

Chapter 222 increases the maximum income ceiling for purposes of the partial exemption for persons with disabilities and limited incomes (RPTL, §459-c) from the current $19,500 to $20,500 (§459-c(5)(a)). This also results in a corresponding increase in the

"sliding scale" portion of the exemption (RPTL, §459-c(1)(b)), for example, permitting municipalities to grant the minimal five percent exemption to persons with incomes between $28,000 and $28,900. The income requirement in section 459-c is similar (but not identical) to that applicable to the senior citizens exemption (RPTL, §467(3)(a)). (Note that by virtue of Chapter 198, discussed below, the maximum income ceiling for the senior citizens exemption has been raised from $19,500 to $20,500 as well.) This legislation applies to assessment rolls based on taxable status dates occurring on and after January 1, 2001.

Postal Service Disability Pensions

Chapter 421 expands the category of owners of real property who qualify for the exemption for persons with disabilities and limited income (§459-c) to include persons certified to receive United States Postal Service disability pensions. Since such pensions were not specifically mentioned under prior law, recipients of such pensions were not necessarily eligible for the exemption, even if they had a physical or mental impairment which otherwise met the statutory criteria.

## Senior Citizens

Income Ceiling

Chapter 198 amends the senior citizens exemption (RPTL, §467) to increase the maximum income ceiling for the basic (i.e., 50 percent of assessed value) exemption from $19,500 to $20,500. This adjustment also affects the sliding scale option in section 467(1)(b) in that the figure referred to in that subdivision as "M" may increase to $20,500. Thus, a municipality adopting the new ceiling may grant a minimal (5 percent) exemption to seniors whose incomes do not exceed $28,899.99. This is the 14th increase in the maximum income ceiling since the exemption was first enacted in 1966 (c.616), the last increase (to the current $19,500 limit) coming in 1998 (c.298). (Note that by virtue of Chapter 222, discussed above, the maximum income ceiling for the exemption for persons with disabilities and limited incomes has been raised from $19,500 to $20,500 as well.) This legislation applies to assessment rolls based on taxable status dates occurring on and after January 1, 2001.

## STAR

Mixed-Use Property

Chapter 264 allows the STAR exemption (RPTL, §425) to be granted to the portion of a "mixed-use" property that serves as the primary residence of the owner, although the property is not primarily residential in character. For example, STAR may be granted to a two-story commercially-zoned building consisting of a store at ground level and the owner's living quarters upstairs. In keeping with the residential character of STAR, the exemption in these cases may not exceed the assessed value attributable to the owner's residence, so if

the residential portion is worth less than the applicable STAR exemption, the excess exemption may not be applied to the remainder. (Note that where the property is of the type that has always been eligible for STAR – i.e., a one, two or three family residence, a residential cooperative or condominium or a farm dwelling, or a mobile home -- the full exemption should be applied, without proration.) This legislation applies to assessment rolls based on taxable status dates occurring on or after January 1, 2001.

Prior Year Rolls

Chapter 104 provides that where school taxes are levied upon prior year assessment rolls, the assessing unit may adopt a local law providing that STAR applications may be submitted until the taxable status date for the current year's assessment roll (RPTL, §425(6)(d)). Where such a local law is in place, STAR eligibility for purposes of a school year shall be based upon the condition of the property as of the prior year's taxable status date but upon its ownership as of the current year's taxable status date. If a parcel is found to be eligible for STAR, the exemption is entered on the prior year's roll, thereby avoiding the one-year lag that would otherwise apply due to the use of the prior year's roll. A local law enacted pursuant to this legislation applies to assessment rolls based on subsequent taxable status dates, and if adopted before June 30, 2000, may apply retroactively to the assessment roll based on the 2000 taxable status date as well.

Note that similar procedures had been in place to address the prior year roll issue when the Basic and Enhanced STAR exemptions were initially implemented (see, L.1997, c.389, Part B, §19; L.1998, c.18). However, those procedures were not subject to a local option, and were in effect only through 1999.

Annual School District Budget Notices

Chapter 60, a comprehensive education-related Budget Bill, includes a provision which expands the annual budget notice requirement imposed upon school districts last year, by requiring those notices to include information specifically related to STAR. Last year's legislation (Education Law, §2022(2-a), as added by L.1999, c.405, Part L, §10-d) generally requires school districts outside of the "Big Five" cities to annually mail a notice to all qualified school district voters prior to the vote on the proposed budget. The notice must compare the change in total spending under the proposed budget to that under the current budget, as well as to the change in the Consumer Price Index over the applicable period, and must set forth the date, time and place of the upcoming budget vote. Under this year's legislation (Education Law, §2022(2-a), as amended by Chapter 60, Part A, §3), beginning with the proposed budget for the 2001-02 school year, that notice must also include:

< A description showing how both the total spending and the tax levy under the proposed budget would compare to that under a projected contingency budget, if a contingency budget were adopted on the same day as the budget vote. This

comparison must be displayed both in total and by component (i.e., program, capital and administrative), and must include a statement of the assumptions made in estimating the projected contingency budget.

< A comparison showing (1) how the tax savings under the Basic STAR exemption compares to the increase or decrease in school taxes from the prior year under the proposed budget, and (2) how the net savings for a hypothetical $100,000 home under the existing budget compares to the net savings for such a home under the proposed budget. These comparisons must be made in a manner and format prescribed by the Commissioner of Education, after consulting with ORPS.

Cash Flow to School Districts

Chapter 60, discussed immediately above, also extends the pre-existing provisions regarding payments of STAR reimbursement to school districts by the State, so that the moneys will be paid during the 2000-01 school year on the same schedule that applied during the 1998-99 and 1999-2000 school years (Education Law, §3609-e(2), as amended by Chapter 60, §44).

**Veterans**

Gold Star Parents

Chapter 326 amends the alternative veterans exemption (RPTL, §458-a) to authorize counties, cities, towns and villages which offer the exemption to make it available to "Gold Star Parents" (i.e., parents of children who died in the line of duty while serving in the United States armed forces during a period of war). These municipalities may make such parents eligible to receive the basic (15 percent) exemption and additional combat zone (10 percent) exemption, but not the additional service connected disability (one-half of disability rating) exemption (RPTL, §458-a (2) (a), (b), (c), respectively) on their primary residences.

Under prior law, the exemption was generally limited to property owned by the veteran, spouse of the veteran or unremarried surviving spouse of the veteran (§458-a (1)(c)), although it could be granted to property owned by a dependent parent or child of the veteran under certain circumstances (§458-a(1)(d)). A dependent parent is one who was not completely self-supporting at the time of the veteran's death, who was dependent on the veteran to support him or her, at least in part, and who is not self-supporting after the veteran's death (1 Op.Counsel SBEA No. 102). In the case of "Gold Star" parents, however, dependency will no longer be required.

This legislation applies to assessment rolls based on taxable status dates occurring on and after January 1, 2001.

Lapsed Eligible Funds

Chapter 334 amends the eligible funds veterans exemption (RPTL, §458) so as to provide that a veteran (or certain family members) may obtain an eligible funds exemption if he or she purchases property with eligible funds at any time. This overrides 9 Op.Counsel SBEA No. 20, which analyzed the 1984 legislation (c.525) that enacted the alternative veterans exemption (RPTL, §458-a) and concluded that, "A veteran who had eligible funds but did not apply for an [eligible funds veterans] exemption by March 1, 1986 may not receive [an eligible funds] veterans exemption in a municipality granting the alternative veterans exemption." This new legislation applies to assessment rolls with taxable status dates occurring on and after January 1, 2001.

Technical Corrections

Chapter 144, the "technical corrections" legislation discussed above (p.3), includes a provision that amends the alternative veterans exemption statute (RPTL, §458-a) to clarify that the recent amendment that eliminated the annual filing requirement in certain cases (L.1998, c.433) does not prevent an otherwise qualified applicant from seeking the exemption if he or she fails to apply in the first year of eligibility. It also clarifies that while annual filings are no longer necessary, a new filing is required whenever the applicable disability percentage changes.

**Other Exemption-related Legislation**

Retroactive Exemptions for Specific Properties

Assessors in several jurisdictions were authorized to accept exemption applications after the applicable taxable status date for specific properties (27 in all) owned by named nonprofit organizations and certain other entities. In most cases, the entity acquired the property after taxable status date, though in some cases, the entity had title but simply failed to file the exemption application by taxable status date. The prospective applicants and the affected assessing units are as follows:

| Chap. | Owner | Location |
|---|---|---|
| 38 | United Pentecostal Church of Greater New York | New York City |
| 151 | Holy Church of Christ | Islip |
| 204 | Village of Rockville Center | Nassau County |
| 211 | Hebrew Academy of Five Towns & Rockaway | Nassau County |
| 228 | United Korean Presbyterian Church of Long Island | Nassau County |
| 240 | Baldwin Fire District | Nassau County |
| 246 | Congregation Aish Kodesh | Nassau County |

| Chap. | Owner | Location |
|---|---|---|
| 247 | Hebrew Academy of Long Beach | Nassau County |
| 252 | Bible Baptist Church | Nassau County |
| 297 | Bethlehem Children's School | Bethlehem |
| 308 | Bethel United Pentacostal Church | Nassau County |
| 311 | Maria Montessori School | Nassau County |
| 315 | Bellmore-Merrick E.M.S. Inc. | Nassau County |
| 319 | Chabad of Port Washington | Nassau County |
| 320 | Port Jewish Center | Nassau County |
| 321 | Roslyn Torah Foundation | Nassau County |
| 322 | St. Gregorios Malankara Orthodox Church | Nassau County |
| 323 | Glory Zone Ministries International, Inc. | Islip |
| 327 | Thornton-Donovan School | New Rochelle |
| 329 | Trinity Evangelical Lutheran Church | Babylon |
| 331 | Miracle Christian Church | Nassau County |
| 340 | Chabad Lubavitch of Plainview, Inc. | Nassau County |
| 344 | Hands Across Long Island | Islip |
| 346 | Ban Suk Korean United Methodist Church | Nassau County |
| 360 | National Preservation Institute (and others) | Islip |
| 450 | City of Norwich | Norwich (Town) |
| 466 | Village of Amityville | Babylon |

## III. TAX COLLECTION AND ENFORCEMENT

### Installment Payments

Interest on Installments in City School Districts

Chapter 212 enables city school districts to offer installment payment programs that do not require participants to pay interest on the installments (RPTL, §1326). Until 1999, if a city school district established an installment payment program under section 1326, it could not require interest to be paid on any installment that was paid when due, though the payment might not occur until late in the school year. This was an exception to the general rule that interest must be charged on all taxes paid after a grace period which normally ends in October (see, §1328(3)).

In 1999, the Legislature amended section 1326 to provide that when such an installment plan is established, interest must be charged on the installments (c.447). Upon signing this amendment, the Governor issued an Approval Message (#13) objecting to the mandatory nature of the interest provision, and stating that he was signing the bill only because the Legislature had agreed to pass a chapter amendment that would give each school district the **option** to charge – or to not charge – interest. This law is the result.

**Tax Enforcement Procedures**

Securitization of Delinquent Tax Liens

Chapter 203 allows tax districts to stabilize and improve their revenue collections by selling their delinquent real property tax liens to the New York State Municipal Bond Bank Agency ("MBBA"), or to a "tax lien entity" created by the MBBA for this purpose. In connection with this transaction, the MBBA or its tax lien entity will "securitize" the purchased tax liens – i.e., it will issue obligations secured by those liens. Securitization is a relatively new but increasingly common means of gaining access to capital markets for the purpose of financing transactions involving various types of receivables. It allows the asset owner (in this case, the tax district) to receive the maximum consideration for its receivables.

In addition to providing the statutory structure for the securitization process (Public Authorities Law, §§2430 et seq.), the legislation adapts the tax enforcement process to enable tax districts to participate in the program (RPTL, §§1190-1194). It specifically authorizes tax districts to enter into contracts to sell some or all of their delinquent tax liens to the MBBA or its tax lien entity, even though tax lien sales are not otherwise permitted under Article 11. Tax districts which opted out of Article 11 may enter into such contracts as well.

Any such contract must specify the amount payable to the tax district upon the sale (which may be more or less than the face value of the liens), and shall further specify any additional amounts which may be payable to the tax district on a contingent basis after the sold liens are redeemed and/or foreclosed. The contract may also address such issues as the payment of transaction costs, the responsibility for collecting delinquent taxes after the sale (i.e., tax district may or may not be required to continue collecting such payments), and the circumstances under which liens may be repurchased by the tax district after the sale.

At least 30 days before the sale, affected property owners must be notified that the sale is pending. After the sale, the Enforcing Officer generally has no further responsibilities relative to the sold liens, unless the contract provides otherwise. When it becomes necessary to foreclose a lien which has been sold, it is generally the tax lien purchaser or its successor which must bring the foreclosure action, using special procedures that are based upon the mortgage foreclosure process (see, §1194, which is derived from former Article 11, Title 2); the tax district will not be directly involved in the foreclosure process unless it repurchases

one or more liens pursuant to the contract, in which case the locally-applicable tax enforcement procedures would once again be followed.

The MBBA currently is working to make this new program operational, and will distribute further information as it becomes available.

Foreclosure Notices and Certified Mail

Chapter 358 requires tax districts to use certified mail to notify a property owner that an *in rem* foreclosure proceeding has been commenced against his or her property pursuant to Article 11 of the RPTL. It also provides that, when sending notice to a non-owner with an interest in the property (e.g., a mortgagee), a tax district may use certified rather than ordinary mail, if it so chooses (RPTL, §1125).

This new legislation does not specify the consequences if an addressee refuses to accept delivery of a foreclosure notice which was sent by certified mail. However, it does leave intact the pre-existing statutory directive that "[t]he failure of an intended recipient to receive any such notice shall not invalidate any tax or prevent the enforcement of the same as provided by law" (RPTL §1125(3)(b)), so a refusal to accept delivery should not impact the foreclosure process. Nonetheless, to be on the safe side, if an owner should refuse to accept such a notice, the tax district may wish to send a duplicate notice to that owner by ordinary first-class mail, which cannot be refused.

Note that the new legislation does not require that tax districts request return receipts in connection with these certified mailings. Accordingly, to prove compliance with the law, it should be sufficient for the tax district to execute an affidavit stating that the notice has been mailed to the owner by certified mail (§1125(3)(a)); no return receipt should have to be presented. However, tax districts may request return receipts if they so choose, and add the extra cost (currently, a relatively modest $1.25) to the amount due as a "charge" (§1104(2)). If a return receipt has not been requested and the owner denies receipt, proof of delivery may still be obtained from the Postal Service, but the cost of this special service is considerably higher (currently, $7.00).

## IV. MISCELLANEOUS

### Legislation Affecting Numerous Jurisdictions

Settlement of Claims by Towns

Chapter 428 permits towns with populations of less than 200,000 to settle any action or claim without the approval of State Supreme Court (Town Law, §68(4)). Previously,

towns of that size had to obtain such approval in order to settle any claims of $300 or more (larger towns were not so limited).

Southern Tier Extension Railroad Authority

Chapter 75 creates a Southern Tier Extension Railroad Authority (Public Authorities Law, §§2642 et seq.) to enhance and preserve the system of railroads serving Allegany, Cattaraugus, Chautauqua, and Steuben counties in New York, as well as Warren and Erie counties in Pennsylvania. The Southern Tier Extension Railroad Authority shall continue for 30 years, or so long as it shall have outstanding financial obligations or until its existence shall otherwise be terminated by law. It shall consist of 14 members, 13 voting members appointed by the local governments and one non-voting member by the Seneca Nations of Indians. The four counties shall each appoint three voting members who shall be residents of the respective counties.

Insofar as real property tax issues are concerned, the Authority is exempt from taxation except for water and sewer fees, assessments or special ad valorem levies. (Public Authorities Law, §2642-h(1) and (2)). It will not be required to make payment in lieu of taxes, but it may do so at its discretion. (§2642-h(3)).

## Legislation Affecting Specific Jurisdictions

Nassau County Interim Finance Authority

Chapter 84 creates a Nassau County Interim Finance Authority (Public Authorities Law, Article 10-D), to help Nassau County emerge from the financial difficulties it is facing. Insofar as real property tax issues are concerned, one of the main objectives of this legislation is to encourage the County to improve its process for resolving and paying tax certiorari claims, with the ultimate goal of eliminating the County's need to borrow to finance such claims. The legislation authorizes the Authority to allocate moneys to the County for this purpose from "transitional aid" appropriated by law. Such an appropriation was made this year by separate legislation (Chapter 88, Part C).

Erie County Assessment Calendar

Chapter 188 changes the assessment calendar applicable to towns in Erie County under the Erie County Tax Act by moving each step up by one full month. Effective September 1, 2000, taxable status date will be May 1 instead of June 1; the tentative assessment roll will be completed and filed by May 24 instead of June 24, Grievance Day will be the first Tuesday in June instead of the first Tuesday in July; and the final assessment roll will be completed and filed by July 1 instead of August 1. This law has no impact outside Erie County.

New York City Class Tax Shares

Chapter 257 reduces the allowable increase for each class tax share in New York City for the fiscal year ending in 2001, by providing that the current base proportion of any class may not exceed the adjusted base proportion of the class in the prior fiscal year by more than two percent (RPTL, §1803-a(1)(j)), as opposed to the five percent increase that would otherwise be allowed (see, §1803-a(1)(c)). The excess beyond the two percent limit is to be distributed to the other classes, provided that this distribution may not cause any other class to exceed its own two percent limit. Similar limitations have been enacted seven times in the past eight years (see, §1803-a(1), paragraphs (d) et seq.).

New York City Building Code Violations

Chapter 45 authorizes the enforcement of environmental control board judgments for certain building code violations in the New York City, against owners of private dwellings, wood-framed single room occupancy multiple dwellings, or a multiple dwelling with three or fewer units. Under this legislation, all unpaid judgments shall constitute a tax lien on the property named in the violation, provided the required notifications to the owner and mortgagee are satisfied (Administrative Code of the City of New York, §26-126.5). This legislation takes effect September 5, 2000 and applies to judgments arising out of notices of violation issued on and after that date.

Town of Hempstead; Payment of PILOTs

Chapter 99 renews for five years the authorization for the Town of Hempstead in Nassau County to make payments in lieu of taxes to certain taxing jurisdictions on account of the Town's acquisition of previously taxable real property in the Lido Beach-Point Lookout area for park or recreational purposes (see, L.1970, c.821). This is the sixth such renewal.

Town of Huntington; Water Supply District Charges

Chapter 221 directs that excess moneys accumulated by the Crab Meadow Beach Water Supply District in the Town of Huntington, Suffolk County, be repaid to the owners of property in the district as of November 30, 1997. A reserve for operating expenses and water supply infrastructure needs may be retained.

Town of Southampton; Payment of PILOTs

Chapter 97 renews for six years the authorization for the Town of Southampton in Suffolk County to make payments in lieu of taxes to certain taxing jurisdictions on account of property acquired for open space purposes (see, Town Law, §64-d). This is the second such renewal.

## V. GOVERNOR'S APPROVAL AND DISAPPROVAL MESSAGES

### Approval Messages

*No Approval Messages have been issued to date on any of the bills described above.*

### Disapproval Messages

Veterans Exemption and Life Estates

VETO MESSAGE - No. 11

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 1479-B, entitled:

"AN ACT to amend the real property tax law, in relation to the real property tax exemption for veterans"

NOT APPROVED

This bill would amend the Real Property Tax Law to provide that veterans who retain a life interest in real property shall be eligible for the real property tax exemptions for veterans if the veteran has transferred the remainder interest in said property to a family member or members. The bill would take effect 30 days after becoming a law.

Under the current common law, any otherwise qualified veteran with a life estate qualifies for the veterans exemptions because a "life tenant" is deemed to be the "owner" of real property for taxation purposes (see, e.g., 3 Op. Counsel SBEA No. 45; 9 id, No. 59). Thus, under the existing common law, an otherwise qualified veteran with a life estate qualifies for the veterans exemptions without regard to the grantor of the life estate or the party to whom the remainder interest is conveyed.

Under this bill, however, only those veterans who retain a life interest while granting a remainder interest to a family member qualify. Thus, this bill may result in a veteran who acquires a life estate from a third party (even a family member) being ineligible for exemption. In addition, if the veteran retains a life estate but grants a remainder interest to someone other than a family member (e.g., to a not-for-profit organization), that veteran may also be disqualified. Under the current common law, both veterans would be eligible for the exemptions.

While the intent of the sponsors was to cure an inequity, the enactment of the bill in its current form would impact the veterans' exemptions in a manner unintended by the sponsors in that it would result in a diminution of the scope of said exemptions. While this defect could easily have been remedied by an agreement with the Legislature to enact a chapter amendment, which could have been passed early in the 2001 session, the Assembly unfortunately would not commit to passing such a chapter amendment. As such, I am constrained to disapprove the bill.

The bill is disapproved.

(signed) GEORGE E. PATAKI

Retroactive Exemption for Sesame Flyers International, Inc.

VETO MESSAGE - No. 17

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 7913, entitled:

"AN ACT authorizing the city of New York to grant a retroactive partial tax exemption from real property taxes for the Sesame Flyers International, Inc."

NOT APPROVED

This bill would authorize the Assessor of the City of New York to accept an application for a real property tax exemption pursuant to section 420-a of the Real Property Tax Law from the Sesame Flyers International, Inc. ("Sesame Flyers") for the 1991 through 1996 assessment rolls. The bill provides that if the Assessor chooses to accept the application, Sesame Flyers may be granted an exemption if: (i) it acquired title to the property subsequent to the taxable status date established for the 1991 through 1996 rolls; and (ii) it would otherwise be entitled to the exemption if it had timely filed its exemption application. With local government authorization, unpaid taxes would be canceled and paid taxes refunded.

Sesame Flyers is currently classified as a benevolent order by the City of New York Department of Finance and is thereby enjoying a real property tax exemption pursuant to section 420-b of the Real Property Tax Law. The Department of Finance has concluded that Sesame Flyers qualifies as a section 420-b not-for-profit organization rather than a section 420-a organization; I am further advised that Sesame Flyers has received the benefits of a section 420-b exemption and has not challenged the City's classification. I need not determine, however, whether Sesame Flyers

should be permitted to apply for a retroactive exemption under section 420-a, because this bill suffers from a fatal technical defect.

Specifically, the Department of Finance has advised me, and the sponsors of this bill have confirmed, that Sesame Flyers took title to the property in 1989. Thus, even if the Assessor were inclined to accept the application, the first condition precedent to the grant of an exemption could not be satisfied since Sesame Flyers acquired title to the property prior, rather than subsequent, to the 1991 taxable status date (and, obviously, those which followed).

The bill is disapproved.

(signed) GEORGE E. PATAKI

First-Time Homebuyers Exemption

VETO MESSAGE - No. 40

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 6997-A, entitled:

"AN ACT to amend the real property tax law, in relation to exempting real property purchased by first-time homebuyers from real property taxation"

NOT APPROVED

This bill would amend the Real Property Tax Law by adding a new section 457, which would authorize a partial real property tax exemption for newly constructed homes purchased by "first-time home buyers." "First-time home buyers" are defined in the bill as any person who has not owned a home during the previous three years and who does not own a vacation or investment home. Any increase in assessed value due to renovation and remodeling of existing homes bought by such "first-time homeowners" would also be eligible for the exemption if they cost more than $3,000 and are contracted for within ninety days from the date of purchase. The exemption, which is at local option, would last for five years and begin at a fifty percent tax exemption in the first year and decline to a ten percent exemption in the fifth and final year. Eligibility for the exemption would depend, in part, on the sale price of the home, on the home buyer's income, and on whether the home buyer remains in the home for at least five years. No exemption could be granted for property purchased after December 31, 2004, unless a binding contract of sale had been executed prior to that date. The bill would take effect immediately and be applicable to assessment years on or after January 1, 2001.

I fully support the bill's objectives of encouraging the development of new housing stock, revitalizing existing housing stock, and expanding home ownership opportunities for first time home buyers. I also support meaningful measures designed to alleviate the heavy burden of real property taxes on our State's homeowners. However, serious technical deficiencies in the bill command my disapproval. First, the income and sales price limitations are to be obtained from the "Low Interest Rate Mortgage Program" administered by the State of New York Mortgage Agency (SONYMA). A review of that program reveals that there are separate figures for "target" and "non target" areas within each county for SONYMA's purposes. There are also different income limits for different size households and different price limits for different categories of homes. This bill recognizes no sub-county distinctions for exemption purposes. In fact, the language that it uses creates the distinct misimpression that there will be a single income ceiling and a single purchase price ceiling for each county.

There is also a significant loophole in the definition of "first-time home buyer". Specifically, under the definition used for other programs (e.g., National Affordable Housing Program and SONYMA Low Interest Rate Mortgage Program), a purchaser is not a first-time home buyer if his or her spouse owned a home during the three year waiting period. Under this bill, there is no such restriction.

Finally, there is no workable mechanism in the bill for recapturing the exemption when the owner vacates the home before residing therein for five years. The bill specifies that the owner will be liable for the amount due, and that there will be a lien against the property if the amount due is not paid. However, rather than prescribe a process for enforcing these liens, it authorizes the locality to do so by local law. The problem is that these liens will not exist until the exempt property is vacated, which will generally occur when the property is sold. Due process considerations make it extremely difficult to enforce a lien against the new owner, who cannot easily be charged with notice of a lien that did not exist when he or she acquired the property.

I am directing the Office of Real Property Services to work with the sponsors of this legislation to correct the technical defects in the bill and assist in drafting a bill that encourages the development of new housing stock and the revitalization of existing housing stock in a manner that minimizes disruption in the housing market and protects local governments and their taxpayers.

The bill is disapproved.

(signed) GEORGE E. PATAKI

VI. LEGISLATIVE STATUS CHART

## VII. CHAPTER INDEX

February, 2001

# ADDENDUM TO SUMMARY OF 2000 REAL PROPERTY TAX LEGISLATION

When the Summary of 2000 Real Property Tax Legislation was prepared, a number of bills of interest were still awaiting action. This Addendum sets forth the final status of those bills. It also includes copies of noteworthy Disapproval Messages issued by the Governor after the publication of that Summary, as well as an updated Legislative Status Chart and an updated Chapter Index.

As before, the descriptions that follow are intended to provide general information about the major features of the new laws, rather than detailed explanations. Questions may be directed to the Office of Counsel, State Office of Real Property Services, 16 Sheridan Avenue, Albany, New York 12210-2714; telephone number (518) 474-8821.

## NEW LEGISLATION

*Fire and Ambulance Volunteers in Certain Counties:* Chapter 609 authorizes a county with a population between 133,000 and 141,000 inhabitants according to the latest federal decennial census, and the towns and villages (but not cities or school districts) therein to adopt local laws, ordinances or resolutions providing a partial real property tax exemption for members of incorporated volunteer fire companies, fire departments and incorporated volunteer ambulance services. The new exemption (RPTL, §466-b), available only to enrolled members and their spouses, equals 10 percent of assessed value, subject to a maximum of $3,000 times the latest State equalization rate.

Based on the 1990 federal decennial census, no county falls within the specified population bracket. However, in light of more recent population estimates, Chautauqua County may be expected to fall within this bracket once the complete 2000 decennial census is officially released.

*Tax Stabilization Reserve Funds:* Chapter 528 contains a number of provisions relating to municipal finance, one of which authorizes municipal corporations and fire districts to expend moneys from a contingency and tax stabilization reserve fund to reduce projected real property tax increases that exceed two and one half percent (General Municipal Law, §6-e(4)(d), as amended by Chapter 528, §9). The prior threshold was five percent. This legislation applies to budgets for fiscal years commencing on or after January 1, 2001.

*New York City Co-op/Condo Tax Abatements:* Chapter 579 authorizes the St. George Tower and Grill Corporation (SGT&GC), a cooperatively-owned corporation which owns an apartment building in Brooklyn, to apply to the New York City Commissioner of Finance for a refund of a portion of the payments in lieu of taxes (PILOTs) made on its behalf during 1996, 1997 and 1998. The amount to be refunded equals the tax abatement to which SGT&GC would have been entitled under section 467-a

of the RPTL – the City's partial tax abatement program for residential condos and co-ops – if the property had been taxable during the period in question. The property was actually owned by the New York State Urban Development Corporation and leased to SGT&GC during the period in question, which is why PILOTs were paid instead of taxes.

*Town of Carmel; Sewer and Water Charges:* Chapter 523 permits the Town of Carmel in Putnam County to agree to make payments of certain charges to a sewer and water District for which the Town was not billed from 1995 through 2000. The procedures for correcting omitted taxes on final assessment rolls, though not otherwise applicable, would be used for this purpose (Town Law, §209-s; RPTL, §554-a).

## GOVERNOR'S DISAPPROVAL MESSAGES

State Payments to Westbury Union Free School District

VETO MESSAGE - No. 51

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 7504-A, entitled:

"AN ACT to amend the real property tax law, in relation to making state aid payments to tax districts in certain cases"

NOT APPROVED

This bill would require the State to make payments in lieu of taxes (PILOTS) to the Westbury Union Free School District to offset a loss in local property tax revenues that would result from the purchase by the Nassau County BOCES of a facility that it currently leases. The bill calls for PILOT payments in an amount equal to the taxes levied on the property in the year prior to the purchase (approximately $335,000) and would be payable for a period of twenty years, beginning in the 2001-2002 State fiscal year.

Under current law, the State makes payments in lieu of taxes on certain parcels of real property that it owns or leases. In contrast, this legislation would require the State to make PILOT payments for real property owned or leased by a local government. Considering the unprecedented and unwarranted financial burden that the bill would have on State government, I am constrained to disapprove it.

The bill is disapproved.

(signed) GEORGE E. PATAKI

Property Condition Disclosure Act

VETO MESSAGE - No. 73

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 1173-C, entitled:

"AN ACT to amend the real property law, in relation to disclosure of defects by owners of residential real property upon the sale thereof"

NOT APPROVED

This bill would require every owner selling a one to four family dwelling, other than a condominium, cooperative or newly constructed residential real property, to complete and sign a Property Condition Disclosure Statement ("PCDS") and deliver it to the buyer or buyer's agent prior to the owner's acceptance of a real estate purchase contract. The PCDS consists of 46 questions regarding the property that sellers must answer to the best of their knowledge. Significantly, the bill defines knowledge as actual or constructive knowledge or actual notice of a defect or condition. A seller who provides a PCDS and willfully fails to perform the duties prescribed by the bill would be liable for actual damages suffered by a buyer as a result of the violation, in addition to any existing equitable and statutory remedy. Listing brokers and buyer agents would be required to inform owners and buyers, respectively, of their obligations under the bill. The bill would take effect on January 1, 2001 and would apply to any real estate purchase contract entered into on or after that date.

In New York, under the common law doctrine of "caveat emptor," the seller of real property generally has no duty to disclose defects in the property. There are, however, exceptions to that rule: a confidential or fiduciary relationship between the parties, active concealment by the seller, and affirmative misrepresentation by the seller. By contrast, many other states have moved away from the doctrine of caveat emptor and have imposed affirmative disclosure obligations on sellers. Although it may be appropriate for New York State to impose affirmative disclosure requirements upon sellers of residential real property, the bill before me today contains a number of serious technical defects and ambiguities that command my disapproval.

First, the bill would hold a seller responsible for disclosing conditions and information about which the seller has only constructive knowledge. Requiring a seller of real property to disclose conditions that they should have been aware of but were not in fact aware of raises serious fairness questions. I am advised by the New York State Bar Association that no other state has adopted a constructive knowledge standard. While the constructive knowledge disclosure standard may be ameliorated by another portion of the bill that allows monetary damages to be awarded only for a willful failure to comply with its requirements, the bill is confusing on this

point. Accordingly, the bill fails to achieve what should be one of the primary objectives of any property condition disclosure law: providing both sellers and purchasers with legal certainty and predictability in the sale and purchase of a home.

The proponents of the bill contend that New York would remain a "caveat emptor" state, because sellers would -- as under current law -- not be liable for defects that buyers could have discovered by the exercise of ordinary diligence. If this would be the case, however, the bill should expressly so provide. In any event, the bill would, at the very least, expose sellers to claims of fraud -- and the attendant costs of litigation -- that cannot be brought under current law. I have not been persuaded that such a significant expansion of the liability of sellers is warranted.

Nothing about the PCDS form, moreover, alerts sellers that they could be liable for failing to disclose defects about which they have no actual knowledge. Indeed, the bill itself specifies that nothing in the new article 14 of the real property law it would create "shall require an owner to undertake or provide for any investigation or inspection of their {sic} residential real property." As a practical matter, however, this provision is at odds with the bill's constructive knowledge standard.

Many of the questions in the PCDS require the seller to disclose any "defects", which the bill defines as conditions having a "material adverse effect" on the "value" of the property or the health and safety of the occupants, or an adverse effect (regardless, presumably, of whether it is material) on the "normal life" of the property. The highly general and vague nature of these questions would unfairly require the seller to speculate as to precisely what the questions are asking and how they should be answered.

The time at which a PCDS is required to be delivered to the seller under the bill is also problematic. The bill states that a seller must complete, sign and deliver the PCDS to a purchaser prior to the seller's acceptance of a real estate purchase contract. Thus, the bill allows a seller to deliver a PCDS to the purchaser at a point when the purchaser has signed the purchase contract and can be bound by signature of the seller. At that time, the additional disclosure that the seller would convey would be of limited value to the purchaser. If additional disclosure on the part of the seller is to be mandated, common sense dictates that it should be available to the purchaser prior to contracting.

The bill also fails to provide any remedy for a seller's failure or refusal to provide a PCDS to the purchaser. Although the bill would hold a seller who provides a PCDS liable for monetary damages for a willful failure to comply with the bill's requirements, it does not address the situation where a seller does not provide a PCDS at all. Accordingly, prudent and well-counseled sellers, especially given the potentially enormous consequences stemming from completion of a PCDS, might well determine that the sounder course is to refuse to complete a PCDS.

I am also concerned that the bill does not prohibit rescission after the transfer of title. The absence of a statutory remedy for a seller's failure or refusal to provide a purchaser with a PCDS may invite a court to fashion a remedy of rescission, since this bill neither provides for nor prohibits such a remedy. A judicially created remedy of rescission would undermine the very

purpose of a disclosure law by introducing uncertainty into what should be a certain and predictable transaction for both purchasers and sellers.

For these and other reasons, I cannot approve the bill in its current form.

I have directed my staff to work with the sponsors of this legislation and the interested groups to attempt to correct the technical defects and ambiguities in the bill and to assist in drafting a technically sound and clear bill that provides both sellers and purchasers with legal certainty and predictability in the sale and purchase of a home.

The bill is disapproved.

(signed) GEORGE E. PATAKI

## LEGISLATIVE STATUS CHART

See the Legislative Status Chart published online.

**CHAPTER INDEX**



* Standard numbers refer to pages in the main Summary; numbers beginning with an "A" refer to pages in this Addendum.