

**SUMMARY OF**  
**2002**  
**REAL PROPERTY TAX LEGISLATION**



**STATE BOARD OF REAL PROPERTY SERVICES**

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# SUMMARY OF 2002 REAL PROPERTY TAX LEGISLATION

NEW YORK STATE BOARD OF REAL PROPERTY SERVICES

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February, 2003

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February, 2003

**SUMMARY OF**  
**2002 REAL PROPERTY TAX LEGISLATION**

This document provides a summary of legislation enacted to date in 2002 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:

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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.

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## SUMMARY OF 2002 REAL PROPERTY TAX LEGISLATION

### A. OVERVIEW

This section of the ORPS Summary of 2002 Legislation is a table which presents a concise overview of the newly-enacted laws relating to real property tax administration. The laws in the table are organized according to the following categories: Assessment Administration (Assm't); Exemption Administration (Ex); Jurisdiction-Specific (JS), which presents the new laws which specifically impact only one, or very few, jurisdictions; Miscellaneous (Misc); and Tax Collection and Enforcement (TC&E). Within each category, the laws are in alphabetical order by subject. The following section of the Summary, entitled *Synopses of Selected Enactments*, provides a more in-depth discussion of certain new laws that are deemed particularly noteworthy.

Category	Subject	Chap. No.	Bill No.	Statutory Reference	Description
<u>Assm't</u>					<u>ASSESSMENT ADMINISTRATION</u>
Assm't	Apportionment of county and school taxes	158	S.6729	RPTL, <sup>1</sup> §§ 840, 1314 (also repeals RPTL, §1315)	(1) Changes the date by which counties must decide how to apportion their taxes (i.e., whether to apportion pursuant to Title 1 or Title 2 of RPTL Article 8) from September 1 to November 1. (2) Expands the possibility for school districts to apportion taxes based upon assessed value rather than by using State equalization rates, by providing that school districts containing two or more cities or towns with the same State equalization rates may apportion taxes over those municipalities using assessed values.
Assm't	Apportionment & large parcels	556	S.6221-A	RPTL, §§1316, 847, 805, 818	Relates to large parcels and tax apportionment; see <i>Synopses of Selected Enactments</i> , below (p.16), for more information.
Assm't	Correction of errors	616	S.7218	RPTL, §§ 553, 554, 556	Relates to correction of errors procedures; see <i>Synopses of Selected Enactments</i> , below (p.21), for more information.

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<sup>1</sup> Real Property Tax Law

Category	Subject	Chap. No.	Bill No.	Statutory Reference	Description
Assm't	Note of issue	186	A.8455	RPTL, §718, subd. (1)	Provides that a tax certiorari proceeding is deemed abandoned if a "note of issue" is not filed within four years from "the last date provided by law" for the commencement of the proceeding, rather than four years from "the date of" commencement of the proceeding.
<b><u>Ex</u></b>					<b><u>EXEMPTION ADMINISTRATION</u></b>
Ex	Ag assessment; acreage minimum	445	S.6401B	AML, §301(4)	Reduces from 10 to seven acres the minimum area of "land used in agricultural production;" see <i>Synopses of Selected Enactments</i> , below (p.17), for more information.
Ex	Ag assessment; horse boarding	696	S.6628	AML, <sup>2</sup> §301(4)	Includes all qualified commercial horse boarding operations in "land used in agricultural production;" see <i>Synopses of Selected Enactments</i> , below (p.17), for more information.
Ex	Ag Assessment; thoroughbred horse breeders	516	S.6629	AML, §301(9)	Redefines "gross sales value" to include certain payments received by thoroughbred horse breeders; see <i>Synopses of Selected Enactments</i> , below (p.17), for more information.
Ex	Ag districts	687	S.6913-A	AML, §303	Relates to extension of agricultural districts; see <i>Synopses of Selected Enactments</i> , below (p.17), for more information.
Ex	Disabled veterans	179	A.1632	RPTL, §458(3)	Extends the seriously disabled veterans exemption to special ad valorem levies and special assessments
Ex	Farm waste generating systems	515	S.6592-C	RPTL, §§487, 594(3)(d)	Encourages the installation of farm waste electric generation equipment, by allowing "net metering" and providing an exemption for real property taxation; see <i>Synopses of Selected Enactments</i> , below (p.19), for more information.
Ex	Farm or food processing camps or commissaries	684	S.6606	RPTL, §483-d	Exempts farm or food processing labor camps and other structures used to benefit farm laborers, if the improvements comply with certain standards; see <i>Synopses of Selected Enactments</i> , below (p.18), for more information.

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<sup>2</sup> Agriculture and Markets Law

Category	Subject	Chap. No.	Bill No.	Statutory Reference	Description
Ex	Persons with disabilities; income limits	201	S.1550	RPTL, §459-c subd. (5)(a)	Increases the income limit for the basic ( <i>i.e.</i> , non-sliding scale) exemption from \$20,500 to \$21,500; impacts sliding scale exemption as well; see <i>Synopses of Selected Enactments</i> , below (p.17), for more information.
Ex	Rail Infrastructure Investment Act	698	S.7602	RPTL, Art. 4, Titles 2-A and 2-B	Enacts the Rail Infrastructure Investment Act of 2002, which will generally reduce railroad ceilings; see <i>Synopses of Selected Enactments</i> , below (p.15), for more information.
Ex	RESCUE program	328	A.8823-B	RPTL, §485-a	Creates a Residential-Commercial Urban Exemption (RESCUE) program under which cities with populations between 50,000 and 1,000,000 may offer exemptions to encourage the conversion of commercial buildings in urban downtowns to mixed residential/commercial use; see <i>Synopses of Selected Enactments</i> , below (p.19), for more information. [Note: Technical revisions were made by a chapter amendment, c.343.]
Ex	RESCUE program	343	A.11522	L.2002, c.328	Chapter amendment making technical revisions to c.328.
Ex	Senior citizens; income limit	202	S.1682	RPTL, §467 subd. (3)(a)	Increases the income limit for the basic ( <i>i.e.</i> , non-sliding scale) exemption from \$20,500 to \$21,500; impacts sliding scale exemption as well; see <i>Synopses of Selected Enactments</i> , below (p.17), for more information.
Ex	Solar/Wind exemption	608	S.6212	RPTL, §487	Authorizes those municipalities that grant the solar and wind exemption to require PILOTs <sup>3</sup> from exemption recipients. The PILOT could not exceed the amount of the exemption nor extend beyond the statutory exemption term of 15 years.

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<sup>3</sup> Payments in lieu of taxes



Category	Subject	Chap. No.	Bill No.	Statutory Reference	Description
Ex	STAR (Budget Bill)	83, Part E	A.9760-B	RPTL, §425; Tax Law, §171-k	Provides for a cost of living adjustment to the Enhanced STAR income standard; provides for automatic income verification for enhanced STAR applicants; makes various other revisions to STAR law; see <i>Synopses of Selected Enactments</i> , below (p.12), for more information.
Ex	STAR co-op tenant notices	484	A.8616-A	RPTL, §425 subd. (2)(k)(iii)	Requires cooperative apartment corporations to provide to each STAR eligible tenant-stockholder a written statement detailing how the exemption is being credited no later than 60 days after the corporation receives the exemption.
<b><u>JS</u></b>					<b><u>JURISDICTION-SPECIFIC</u></b> <i>(i.e., applies only to one or very few jurisdictions)</i>
JS	Applications for retroactive exemptions for specific parcels	Var.	Various	Unconsolidated	Various chapters; each generally authorizes the assessor of a specific jurisdiction to accept an exemption application after taxable status date for a parcel owned by a named nonprofit or governmental entity; see <i>Synopses of Selected Enactments</i> , below (p.20), for more information.
JS	City of Albany; payments on State lands	692	A.11515	Pub Lands Law, §19-a(2-a)(1)	Provides a “spin-up” of the State aid payable to the City of Albany on account of certain State-owned lands (see, L.2000, c.56)
JS	City of Cohoes 2002 tentative assessment roll	128	A.11694	Unconsolidated	Authorizes the City Council of the City of Cohoes to adopt a local law or resolution to cancel the City’s 2002 tentative assessment roll and to require the assessor to file a new such roll on or before July 31, 2002. Other assessment calendar dates (e.g., grievance day, final roll filing date) would also need to be set. [Note: Technical revisions were made by a chapter amendment, c.129.]
JS	City of Cohoes 2002 tentative assessment roll	129	A.11874-A	L.2002, c.128	Chapter amendment making technical revisions to c.128

Category	Subject	Chap. No.	Bill No.	Statutory Reference	Description
JS	Fire/ambulance volunteers in Dutchess Co.	435	S.5042-A	RPTL, §466-c	Authorizes exemption for fire/ambulance volunteers in Dutchess County; see <i>Synopses of Selected Enactments</i> , below (p.19), for more information.
JS	Fire/ambulance volunteers in Erie Co.	431	S.3093-A	RPTL, §466-c	Authorizes exemption for fire/ambulance volunteers in Erie County; see <i>Synopses of Selected Enactments</i> , below (p.19), for more information.
JS	Fire/ambulance volunteers in Nassau Co.	440	S.5840-A	RPTL, §466-c	Authorizes exemption for fire/ambulance volunteers in Nassau County; see <i>Synopses of Selected Enactments</i> , below (p.19), for more information.
JS	Fire/ambulance volunteers in Oswego Co.	459	S.6978	RPTL, §466-b subd. (1)	Authorizes exemption for fire/ambulance volunteers in Oswego County see <i>Synopses of Selected Enactments</i> , below (p.19), for more information.
JS	Fire/ambulance volunteers in Putnam Co.	428	S.2499-A	RPTL, §466-c	Authorizes exemption for fire/ambulance volunteers in Putnam County; see <i>Synopses of Selected Enactments</i> , below (p.19), for more information.
JS	Fire/ambulance volunteers in Steuben Co.	433	S.3325-B	RPTL, §466-a subd. (1)	Authorizes exemption for fire/ambulance volunteers in Steuben County; see <i>Synopses of Selected Enactments</i> , below (p.19), for more information.
JS	Fire/ambulance volunteers in Suffolk Co.	450	S.6587-A	RPTL, §466-c	Authorizes exemption for fire/ambulance volunteers in Suffolk County; see <i>Synopses of Selected Enactments</i> , below (p.19), for more information.
JS	Fire/ambulance volunteers in Wyoming Co.	432	S.3210-C	RPTL, §466-c	Authorizes exemption for fire/ambulance volunteers in Wyoming County; see <i>Synopses of Selected Enactments</i> , below (p.19), for more information.
JS	Jamestown; residential investment exemption	470	A.1818-A	RPTL, §485-h	Allows the City of Jamestown to enact a partial and limited duration real property tax exemption for construction of residential properties.

Category	Subject	Chap. No.	Bill No.	Statutory Reference	Description
JS	Nassau Co.; abatements of county taxes for Enhanced STAR recipients	383	S.7532-A	RPTL, §425-a	Authorizes Nassau County to adopt a local law giving seniors who are receiving the Enhanced STAR exemption an abatement from county taxes, which would effectively hold them harmless from some or all of an expected 2003 county tax rate increase. Unlike STAR, the program's cost would be borne not at the State level, but at the local level. Eligible seniors would not need to apply for abatement; they would receive it automatically by virtue of having qualified for and received the Enhanced STAR exemption.
JS	Nassau Co.; assessment review	401	S.7698	RPTL, §523-b; various sections of Nassau Co. Admin. Code	Substantially revises assessment review procedures in Nassau County. [Note: Technical revisions were made by a chapter amendment, c.402.]
JS	Nassau Co.; assessment review	402	S.7774	L.2002, c.401	Chapter amendment making technical revisions to c.401
JS	NYC; §421-a exemption extender	349	A.11695	RPTL, §421-a	Extends until December 31, 2007, the period within which construction of certain new multiple dwellings in NYC must begin in order to qualify for partial exemption. Under prior law, the construction of eligible dwellings had to commence by December 31, 2003
JS	NYC; §421-b exemption extender	160	S.6908	RPTL, §421-b	Extends the exemption program for owner occupied one or two family homes in NYC that are newly constructed, reconstructed or converted to a private dwelling). The extension applies to eligible housing whose construction, reconstruction or conversion commences on or after July 1, 2002, and before July 1, 2006, and whose completion occurs no later than July 1, 2008.
JS	NYC; §488-a ex. extender	330	A.9952	RPTL, §488-a	Extends duration of exemption program for single room occupancy multiple dwellings in NYC

Category	Subject	Chap. No.	Bill No.	Statutory Reference	Description
JS	NYC; §489 exemption extender	418	A.11693	RPTL, §489	Extends the NYC multiple dwelling exemption program and expands the category of Class A multiple dwellings that could receive the enhanced 34 year partial exemption.
JS	NYC; class tax rates	93, Part H	A.11817	RPTL, §1803-a subd. (1)(l)	Provides that for purposes of the NYC fiscal year ending in 2003, the current base proportion of any class may not exceed the adjusted base proportion of that class in the prior fiscal year by more than two percent. Any excess is to be distributed to the other classes, provided it does not drive any other class over its own two percent limit.
JS	NYC; housing development fund companies	315	S.7314-C	PHFL, <sup>4</sup> §577-b	Allows limited tax amnesty program for housing fund development companies in NYC meeting certain criteria.
JS	NYC; payments via private delivery services	513	S.6553-A	RPTL, §925(2)	Allows NYC real property tax payments to be sent via certain private delivery services on essentially the same terms that apply to payments sent via the United States mail. [Note that similar provision was enacted on a Statewide basis by c.568 (see below).] Also addresses numerous other NYC tax issues unrelated to property taxes.
JS	NYC; sales reporting	259	A.4683-A	RPL, <sup>5</sup> §333, RPTL, §574(3)	Extends to NYC the requirement that a sales reporting form (RP-5217) be filed upon recording a deed
JS	NYC; SCRIE program	594	A.11606-A	RPTL, §§467-b and 467-c	Eliminates a waiting period in NYC's Senior Citizen Rent Increase Exemption (SCRIE) Program, which provides rental assistance to seniors living in eligible housing whose household income is \$20,000 or less.

<sup>4</sup> Private Housing Finance Law

<sup>5</sup> Real Property Law

Category	Subject	Chap. No.	Bill No.	Statutory Reference	Description
JS	NYC; urban development action areas	492	S.7282	GML, <sup>6</sup> §692(3)	Expands the definition of “eligible area” for purposes of the Urban Development Action Area Program (General Municipal Law, §§690-698) to provide that the term shall also encompass properties in NYC acquired by the federal government as the result of a foreclosure of a mortgage loan insured or held by the federal government.
JS	Overburden aid	117	A.9740	SFL, <sup>7</sup> §54-c	Extends “overburden” aid for the cities of Albany, Buffalo, Rochester, Syracuse and Yonkers for another year; <u>see also</u> , L.2002, c.53, which appropriates funds for this purpose.
JS	PILOTs and State aid to education	83, Part H, §§87, 105, 106	A.9760-B	Unconsolidated	Provides that for three particular school districts (namely, the Kenwood-Tonawanda Union Free, Corinth Central, and Clifton-Fine Central School Districts), certain PILOTs they receive shall be converted to their actual valuation equivalent for purposes of computing State aid to education.
JS	PILOTs on Central Pine Barrens	250	S.7576	Town Law, §64-e	Extends the Peconic Bay region preservation program, including the imposition of a local real estate transfer tax, until December 31, 2020; also allows PILOTs to school districts and special districts in certain instances.
JS	Pre-1927 tax liens in six counties	335	A.10678	RPTL, §2004 subd. (1)	Rescinds the duty of the Dept. of Taxation and Finance to enforce property tax liens that arose between 1924 and 1926 in six counties (Delaware, Greene, Herkimer, Saratoga, Sullivan and Ulster). Provides that such liens shall cease to exist and become unenforceable as of July 1, 2003, while preserving any tax sales and redemptions occurring prior to the repeal. Takes effect July 1, 2003.

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<sup>6</sup> General Municipal Law

<sup>7</sup> State Finance Law

Category	Subject	Chap. No.	Bill No.	Statutory Reference	Description
JS	Syracuse; unpaid taxes and mortgage foreclosures	348	A.11618-A	RPAPL, <sup>8</sup> §1354 subd. (2)	Revises the population requirements of a directive relating to the payment of taxes in connection with mortgage foreclosures, so that the directive will continue to apply in Syracuse despite its population drop in the 2000 census.
JS	Wappinger tax bills	652	S.7655	Unconsolidated	Authorizes the Wappinger Town Board to adopt a resolution directing its collecting officer to place a separate line on town tax bills showing the amount of taxes levied for purposes of the Grinnell Library Association.
<u>Misc</u>					<u>MISCELLANEOUS</u>
Misc	Business improvement districts	579	A.9446	GML, §980-b <i>et seq.</i>	Clarifies provisions relating to inter-municipal business improvement districts
Misc	Electronic signatures and records act (ESRA)	314	S.7289-A	STL, <sup>9</sup> Art. 1	Facilitates the use and acceptance of electronic signatures and records, by conforming the definition of “electronic signature” currently found in ESRA to federal Electronic Signatures in Global and National Commerce Act (E-Sign Law) definition, which is codified at 15 U.S.C. § 7006(5).
Misc	IDA PILOT provision extender	112	S.7691	GML, §874 subd. (4)(b)(c)	Extends various provisions of law relating to Industrial Development Agencies (IDAs), including certain provisions which give local taxing jurisdictions input into the “uniform tax exemption policies” adopted by IDAs. Those provisions had been scheduled to expire on July 1, 2002, but are now scheduled to expire on July 1, 2005.

<sup>8</sup> Real Property Actions and Proceedings Law

<sup>9</sup> State Technology Law

Category	Subject	Chap. No.	Bill No.	Statutory Reference	Description
Misc	QEZEs and PILOTs	85, Part CC, §12	A.9762-B	Tax Law, §15(e)	Provides that a PILOT made by a Qualified Empire Zone Enterprise (QEZE) pursuant to a written agreement executed or amended on or after January 1, 2001 shall not constitute "eligible real property taxes" for purposes of the QEZE tax credit unless the agreement is approved by both Empire State Development and ORPS as satisfying "generally accepted and recognized norms and standards of real property tax appraisals."
Misc	State Budget; ORPS-related appropriations	53	A.9755-C	n/a	Education, Labor and Family Assistance Budget; includes appropriations to ORPS for the 2002-2003 State fiscal year (pp. 629-632)
Misc	State Budget; RPT-related appropriations	50	A.9752-C	n/a	Public Protection and General Government Budget; includes appropriations related to real property tax administration, such as payment of taxes on certain State lands (pp.282-283), emergency financial ("overburden") aid to certain cities (pp.289-290, <u>see also</u> , L.2002, c.117), and payments to certain school districts to offset real property taxes (pp.294-295).
<b><u>TC&amp;E</u></b>					<b><u>TAX COLLECTION AND ENFORCEMENT</u></b>
TC&E	Collection of certain charges by banks	217	S.6046	GML, §99-t; RPTL, §996	Allows municipal corporations to enter into contracts with banks or trust companies for collection of water or sewer user fees, charges, rates or rentals, or those special assessments that are <i>not</i> collected with real property taxes. Also allows municipal corporations to enter into contracts with banks for collection of special assessments that <i>are</i> collected with real property taxes.

Category	Subject	Chap. No.	Bill No.	Statutory Reference	Description
TC&E	Escrow account termination notices	520	S.7150	RPTL, §953, subd. (8-a)	Provides that when a real property tax escrow account is terminated, and the mortgage investing institution (MII) fails to notify the property owner about his/her/its obligation to pay the property taxes thereafter, the MII will be responsible for any interest or penalties imposed during the “first taxable year following satisfaction of the mortgage.”
TC&E	Interest on tax installments	256	A.2130-A	RPTL, §924-a, subd. (3)	Provides that when a county has adopted a local law authorizing the payment of real property taxes in installments, the county may establish by such local law an interest rate which is lower than that which would otherwise be applicable pursuant to section 924-a(2) of the RPTL. Where the local law is silent on the rate issue, the normally-applicable rate shall apply.
TC&E	Payment via private delivery services	568	S.6761-A	RPTL, §925, subds. (2), (3)	Provides for the payment of real property taxes via designated private delivery services; see <i>Synopses of Selected Enactments</i> , below (p.22), for more information.
TC&E	Variable interest rate	85, Part R, §31	A.9762-B	RPTL, §924-a, subd. (2)	Non-substantive; rewords language relating to role of the NYS Dept. of Taxation and Finance in connection with the index used to establish the variable interest rate.



## **B. SYNOPSES OF SELECTED ENACTMENTS**

This section of the ORPS Summary of 2002 Legislation provides a narrative discussion of new laws relating to real property tax administration that are deemed particularly noteworthy. For a concise overview of other new enactments in the property tax area, see the preceding section of this summary, entitled *Overview*.

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### **STAR Exemption**

Chapter 83, Part E, revised the administration of the STAR Program in a number of respects, primarily in relation to the Enhanced exemption for senior citizens. The changes, which apply to the administration of STAR beginning with 2003 final assessment rolls, are as follows:

#### **a. COLAs**

There will be an annual cost-of-living adjustment to the income limit for Enhanced STAR, based upon the applicable cost of living adjustment used for Social Security purposes. For 2002 rolls, the income limit remains at \$60,000. For 2003 rolls, the income limit will be increased by 3.5% to \$62,100. COLA-based increases will occur each year thereafter. The new income standard for each year will be officially promulgated by ORPS to avoid potential misunderstandings, but is essentially the prior year's STAR income standard increased by the Social Security COLA for the applicable income tax year. Note that in connection with this change, the application process has been modified to standardize the income tax year to be used for STAR purposes, so applications for the Enhanced STAR exemption on a 2003 roll will have to be based on the applicants' 2001 income, applications for the exemption on a 2004 roll will have to be based upon their 2002 income, and so on.

#### **b. Simplified Enhanced STAR renewal process**

Beginning with 2003 assessment rolls, seniors who are re-applying for Enhanced STAR may authorize the assessor to have their incomes verified in subsequent years by the State

Department of Taxation and Finance (DTF). Seniors who choose this option must furnish their taxpayer identification numbers at that time. The assessor will submit the list of numbers to ORPS, along with other identifying information as well to facilitate matching and reporting back (e.g., names of owners and owner's spouses who reside on the premises, parcel ID numbers). ORPS will then pass this information along to DTF. After checking its records, DTF will notify ORPS which applicants satisfy the income requirements and which do not (it will not disclose their actual incomes), and ORPS will forward that information to the appropriate assessors. Most seniors who choose this option will no longer need to re-apply thereafter or furnish tax returns to their local assessors (unless DTF should be unable to verify their returns).

What this means is that to receive the Enhanced exemption on the 2003 roll, eligible seniors will still have to file traditional application forms, with copies of their 2001 tax returns, by the taxable status date. However, if they opt for the verification program when filling out their 2003 application forms, they will not have to reapply or submit tax returns in 2004 or thereafter, assuming their income eligibility continues to be verified each year by DTF. Obviously, this should greatly reduce the burdens both for participating seniors and assessors from that point forward.

There may occasionally be cases where DTF finds that the applicants don't satisfy the applicable income requirements, or where DTF is unable to determine whether the applicants satisfy those requirements. In those cases, DTF will notify ORPS, which will pass the information along to the assessor, who will initiate the process to revoke or discontinue the exemption. The senior would be notified of the possible revocation or discontinuance and given the opportunity to present income documentation or to contest the matter before the Board of Assessment Review.

Even where seniors opt to have their income eligibility verified annually by DTF, it will remain the responsibility of the assessor to ensure that they continue to satisfy the residency and ownership requirements. Thus, the new law requires the assessor to send postcards to these seniors annually, 60 days before taxable status date, advising them of the new income standard (with the COLA adjustment), reminding them that they have chosen to have their income eligibility verified by DTF, and reminding them that they should notify the assessor if their primary residence has changed or if there has been an ownership change.

Seniors who do not wish to participate in the income verification program for any reason will not have to do so. But if they wish to continue receiving the Enhanced STAR exemption, they will have to keep reapplying, with copies of their tax returns, year after year, just as they have been doing. The main difference, as far as they are concerned, is that the assessor will be obliged to send them an application form every year, with a reminder that they must reapply by taxable status date. If a senior who initially decided to opt-out of the income verification program later decides he or she would like to opt in, he or she will be permitted to do so.

It should be noted that the income verification option only applies to renewal applications for Enhanced STAR. A senior who is applying for Enhanced STAR for the first time (or who previously received the exemption in another assessing unit but has moved to a new assessing

unit) will still have to submit an application form accompanied by a copy of his, her or their income tax returns.

It should also be understood that the STAR income verification option does not directly affect seniors who are receiving the Senior Citizens Exemption authorized by section 467 of the RPTL. Such persons will still have to reapply for the 467 exemption annually and provide income documentation therewith (or where applicable, annually file the required affidavit), if they wish to continue receiving that exemption. Of course, as long as they qualify for the 467 exemption, they will automatically qualify for the Enhanced STAR exemption, so they will not need to submit separate STAR applications in those cases.

*c. Third party notices*

The modifications of the renewal process led to two changes in the third-party notice aspect of STAR:

(1) Seniors who opt out of the income verification program -- and who therefore must reapply for Enhanced STAR every year in order to continue receiving the exemption -- may designate third parties to receive annual reminder notices on their behalf. This program is quite similar to the third party notice program that existed under prior law, except that seniors will be filing their designation requests with the assessor, not with the school district, and the notices will be sent to the designated third parties by the assessor, not by the school district.

(2) Seniors who opt in to the income verification program will have the option to designate third parties to receive notices when their Enhanced exemption is at risk of being removed (for example, if DTF has indicated that it cannot verify the senior's income eligibility, or if the assessor finds that the property is no longer the senior's primary residence). Note that these third parties would not get annual notices relating to the annual reapplication requirement, because these seniors, as participants in the income verification program, would not be required to reapply for Enhanced STAR annually.

*d. Hardship filing extensions*

Seniors who are unable to file their applications with the assessor by taxable status date due to a death or illness in their immediate family will be permitted to file them as late as Grievance Day, just as with the 467 exemption (except that in the case of the 467 exemption, the extension is available only at local option). Of course, with the new income verification program, this will generally be an issue only for those who opt out (since those who opt in will not need to reapply annually).

*e. Special situations*

A number of provisions have been added to address special situations, arising under both to the Basic and Enhanced Exemptions. Specifically:

(1) A husband and wife are entitled a STAR exemption on no more than one residence, unless they are living apart due to legal separation. In other words, if they have two homes within New York State, they may only receive STAR on one of them, unless they are legally separated.

(2) If a parcel contains two or more physically separate residences, a STAR exemption may be granted to each residence (*i.e.*, the parcel may receive more than one STAR exemption), where each residence (a) is the primary residence of at least one of the owners, and (b) would be eligible for the exemption if it were separately assessed and owned solely by the owners residing therein. Only one STAR exemption may be applied to the land in such cases, however.

(3) If a residence is split by a municipal boundary (e.g., is located in two towns), and the eligibility requirements are otherwise satisfied, the exemption shall be pro-rated between the two municipal corporations in the same manner as the full value of the property was apportioned by the respective assessors. This does not apply where the land is split by the boundary but the residence itself is not.

*f. Mitchell-Lama co-ops*

Residents of Mitchell-Lama co-ops who satisfy the STAR eligibility requirements (whether Basic or Enhanced) will be entitled to a STAR-related credit against their monthly carrying costs.

Rail Infrastructure Investment Act of 2002

Chapter 698 enacts the “Rail Infrastructure Investment Act of 2002,” which revises the methodology for the calculation of railroad ceilings to the benefit of railroads while providing State financial assistance to cushion the impact on local governments. It is expected to reduce the tax burden on railroads in the State by approximately 45% through a series of adjustments to the statutory railroad ceiling formula (RPTL, Art. 4, Titles 2-A and 2-B).

Most of the adjustments modify the Reproduction Cost New (RCN) component of the formula. The first excludes new capital improvement projects from RCN for a period of ten years. These projects must be approved by the Department of Transportation (NYSDOT). This exclusion is the core of the “infrastructure investment” aspect of the legislation. Under the new law, railroads will not experience, as they would have under prior law, an immediate increase in their real property taxes because they make major improvements. Whether or not a particular ceiling contains a NYSDOT-approved capital project, there are other changes to the ceiling calculation. The RCN estimate will no longer include a factor for overhead. At present this factor is a uniform 10% addition to the RCN. The depreciation applied to the RCN is also adjusted by the new law. Grading, which previously was not depreciated because it was treated as “land,” (as thus not subject to physical depreciation), will now be depreciated 18% per year up to 90%. In addition, the depreciation applicable to tracks will be increased automatically in 2003 and, upon a showing of improved service, for ten year periods beginning in 2004. Finally, the curves used to calculate the profitability factors would be changed to provide greater exemptions.

The reductions will be phased in on a schedule of 25% in 2003 and 2004, 50% in 2005 and 2006, 75% in 2007 and 2008, and 100% in 2009 and thereafter. State aid will be available in an amount equal to the difference in taxes received for 2000 and 2003 assessment rolls. This same amount will be payable in 2004, 2005, and 2006, followed by increases in 2007 and 2009. The net effect of the interaction of the two schedules will be to hold local governments harmless in 2003 and 2004 and to provide assistance for one-half of the loss to local governments from the new calculations (as measured from 2000 payments) for 2005 through 2012. It is estimated that State aid will amount to \$4,700,000 for 2003 and a total of \$70,000,000 for the ten years during which assistance is available.

### Tax Apportionment Involving Large Properties

Chapter 556 provides an optional alternative method for apportioning taxes by school districts and counties which contain a “designated large property,” in order to mitigate the influence such properties may have upon the apportionment process.

Under the traditional tax apportionment process, when an assessing unit contains a very sizable commercial, industrial or other property which in the opinion of ORPS is significantly overassessed or underassessed, it may lead to disparities in the apportionment of school district and county taxes. For example, if a town contains a substantial power plant and assesses it at a significantly higher percentage of value than other property in the town, school taxes on homes within that town will tend to be significantly lower than school taxes on comparable homes in the other towns in the same school district. The same is true, although to a lesser extent, for the affect counties. The basic objective of Chapter 556 is to give these school districts and counties the ability to eliminate these disparities among the non-plant properties, so that comparable homes within the school district will pay the same amount in school taxes (assuming the assessments are otherwise equitable).

Turning to the specifics of the legislation, the alternative apportionment method authorized by the new law is a local option, which may be exercised by each affected county and school district by adopting a resolution on an annual (not on a one-time) basis. A school district must adopt its annual resolution no later than 10 days before the levy of taxes, a county must do so by November first. (Note that since this law did not take effect until January 1, 2003, the option was not available for purposes of the 2002-03 school tax levy or 2003 county tax levy.)

For purposes of the legislation, a “designated large property” is defined as a parcel (or multiple parcels under common ownership) which: (a) constitutes five percent of the assessed value of an assessing unit and five percent of its school district segment, (b) is worth at least five million dollars, according to the full value estimate used to establish the latest State equalization rate, and (c) if removed from the calculation of the State equalization rate calculation, would result in a five percent difference in that rate. When a property meets these criteria, ORPS will calculate an “apportionment” rate (effectively, the State equalization rate calculated without the large property) and furnish both rates to school district, and where the county uses ORPS-

determined rates to apportion its taxes (RPTL, Art. 8, Title 2), to the county. If the school district or county has opted to utilize the alternate apportionment methodology, it would then:

- (1) apportion its tax in traditional manner (i.e., by applying the State equalization rate or special rate to the assessed value of each segment), and determine the tax chargeable to the large property accordingly; and
- (2) deduct the large property's tax from the overall tax levy and reapportion the rest of the tax in the traditional manner except that for the segment with the large property, the apportionment rate would be applied to the assessed value of all other property.

A similar two-step apportionment option is also available for counties that establish their own equalization rates for county tax purposes (RPTL, Article 8, Title 1).

It should be understood that this redistribution of the tax burden would not impact the large parcel itself; the owners of that property would pay the same tax under this option as when taxes are apportioned in the traditional manner. If they consider their tax burden excessive, their recourse would be the same as it had previously been: to challenge the assessment in the manner provided by law.

#### Senior Citizens Exemption; Income Limits

Chapter 202 amends the senior citizens exemption (RPTL, §467) to increase the maximum income ceiling for the basic (i.e., 50% of assessed value) exemption from \$20,500 to \$21,500. This adjustment also affects the sliding scale option in section 467(1)(b) in that the figure referred to in that subdivision as "M" could increase to \$21,500. This means that a municipality adopting the proposed ceiling could grant a minimal (5%) exemption to seniors whose incomes are less than \$29,900.

#### Exemption for Persons with Disabilities; Income Limits

Chapter 201 amends the exemption for persons with disabilities and limited incomes (RPTL, §459-c), to increase the maximum income ceiling permitted under that statute from \$20,500 to \$21,500. This adjustment 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 (5%) percent exemption to persons whose incomes are less than \$29,900.

#### Agricultural Districts; Lands Used in Agricultural Production

A series of new laws expand the eligibility of land for agricultural assessments under the Agricultural Districts Program (Agriculture and Markets Law (AML), Article 25-AA). Under prior law, in order to qualify as "lands used in agricultural production," agricultural land, whether owned or rented by the farmer, generally had to be at least 10 acres in area and had to produce "crops, livestock or livestock products" with an "average gross sales value" of \$10,000 or more (AML, §301(4)). Rented land of at least 10 acres in size that did not independently produce an average gross sales value of \$10,000 or more could nevertheless qualify for an

agricultural assessment if “used under a written rental arrangement of five or more years in conjunction with land which is eligible for an agricultural assessment” (§301(4)(b)). Lands which were less than 10 acres in area could qualify only if the products thereon generated an average gross sales value of \$50,000 or more. The new laws changed these rules as follows:

*Minimum acreage:* Chapter 445 changes the general rule by lowering the minimum required size for eligible land owned or rented by a farmer to seven acres, without altering the \$10,000 average gross sales value threshold. As a result, the \$50,000 gross sales value criterion is now relevant only to agricultural lands of less than seven acres. For operations consisting of both farmer-owned land and rented land, this effectively provides a double benefit: The operation now need include only seven farmer-owned acres (as opposed to the prior minimum of 10) and seven rented acres (also as opposed to the prior minimum of 10). In addition, the 10 acre minimum size of eligible horse boarding operations has also been lowered to seven acres.

*Horse boarding operations:* Chapter 696 redefines “land used in agricultural production” so as to include all qualifying commercial horse boarding operations (i.e., those where at least seven acres of land was used in the preceding two years to support a commercial horse boarding operation with annual gross receipts of \$10,000 or more). Previously, county legislative bodies had the option to include or exclude such operations. Until this change, commercial horse boarding had been the only category of agricultural activity whose eligibility for an agricultural assessment was subject to local option.

*Thoroughbred horse breeder payments:* Chapter 516 redefines “gross sales value” so as to include payments received by thoroughbred horse breeders from the New York State Thoroughbred Breeding and Development Fund (see, Racing, Pari-Mutuel Wagering and Breeding Law, §§244 to 250). These payments are based on the eligible horses’ finish in pari-mutuel races held in New York State; the higher the finish, the greater the payment.

*Extension of Agricultural Districts:* Finally, though not directly related to agricultural assessments, chapter 687 establishes a procedure by which an existing agricultural district may be extended, prior to the county established review deadline, in order to include additional viable agricultural land. Such a proposal to extend an existing agricultural district may be initiated by a request from a land owner at any time.

#### Farm or Food Processing Labor Camps or Commissaries

Chapter 684 provides a total exemption from real property taxes and special district charges for farm or food processing labor camps or commissaries, as defined in Article seven of the Labor Law, and “other structures used to improve the health, living and working conditions for farm laborers,” so long as those improvements comply with standards set by the Departments of Labor and Health and the State Building Code Commission. A one-time application prescribed by ORPS must be filed with the assessor. If the exemption is approved, it will be continued year-to-year unless the improvements fail to comply with those standards.

### Farm Waste Electric Generating Facilities

Chapter 515 allows “net metering” for farm waste electric generation equipment, provides an exemption for real property taxation for that equipment and excludes the process from the oil and gas unit of production program (RPTL, Title 5 of Article 5). Chapter 399 of the Laws of 1997 created a program for "net metering" of residential solar energy facilities, enabling individuals to receive an income tax credit for solar energy facilities and to sell any excess electricity from their facilities to their electrical service provider. Such equipment had already been exempt from the real property tax for a period of 15 years pursuant to RPTL § 487. This enactment extends this concept to farm waste facilities that produce biogas that in turn can be used to generate electricity.

### Fire/Ambulance Volunteers in Certain Counties

A series of new enactments collectively provide that in eight counties – Dutchess, Erie, Nassau, Oswego, Putnam, Steuben, Suffolk and Wyoming (chapters 435, 431, 440, 459, 428, 433, 450 and 432, respectively), the county and any city, village, or town therein may adopt a local law, ordinance or resolution providing a partial real property tax exemption for members of incorporated volunteer fire companies, fire departments and incorporated volunteer ambulance services [hereinafter “volunteer companies”]. In Putnam and Suffolk Counties, the exemption may also be offered by school districts, but not in the other counties. The exemption, available only to enrolled members and their spouses, would equal 10 percent of assessed value, but not to exceed \$3,000 times the latest State equalization rate, and would apply to taxes and special ad valorem levies, but not special assessments. In addition:

1. the applicant must reside in the city, town or village served by the volunteer company,
2. the exemption is limited to the applicant’s primary residence,
3. only the residential portion of the property may receive the exemption, and
4. the applicant must be certified by the authority having jurisdiction over the volunteer company as having been a company member for at least five years.

At further local option, the municipality could grant a lifetime exemption to members who have provided over 20 years of volunteer company service. ORPS must promulgate the exemption application. The exemption first applies to 2003 assessment rolls.

Note that similar legislation had already been on the books for Rockland and Chautauqua Counties (RPTL, §§466-a and 466-b). Thus, these new enactments bring to 10 the total number of counties in which this type of exemption may be offered.

### RESCUE Program for Certain Cities

Chapters 328 and 343 create a Residential-Commercial Urban Exemption (RESCUE) Program to allow cities whose population is between 50,000 and 1,000,000 (i.e., Albany, Buffalo, Mount Vernon, New Rochelle, Niagara Falls, Rochester, Schenectady, Syracuse, Utica,



White Plains and Yonkers) to offer exemptions to developers and building owners to encourage creative reuse of office, warehouse, manufacturing, and retail buildings in urban downtowns for residential and commercial mixed uses. Provides a declining exemption for a period of 12 years, for the increase in the property's assessed valuation attributable to the conversion. The exemption from city taxation is available at the local option of the city. If approved by the city through the adoption of a local law, the county in which the city is located, by adoption of a local law, may exempt such property from county taxation and county special ad valorem levies. Similarly, a school district located wholly or partially in the city, by adoption of a resolution, may exempt such property from school taxation.

Retroactive Exemptions for Specific Properties

In a number of assessing units, the assessor was authorized to accept an exemption application after taxable status date for a parcel owned by a named nonprofit or governmental entity. 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 assessing units involved, are as follows:

<u>Chap.</u>	<u>Owner</u>	<u>Location</u>
181	N. Amityville Housing Rehab. Ass'n.	Babylon
183	Bethel Temple	Mt. Vernon
184	Faith Temple Church of God in Christ	Babylon
187	Deliverance Revival Center*	Nassau, Vlg. of Hempstead
188	Thornton-Donovan School	New Rochelle
198	Agape Fellowship Church	NYC
224	Full Gospel Church of Island Park	Nassau
225	All Saints' Episcopal Church	Nassau
233	East Meadow Fire District	Nassau
234	Uniondale Public Library District	Nassau
258	Sesame Flyers International	NYC
274	Southern Baptist Church	NYC
298	Priority One (USA Outreach)	Nassau
299	Congregation Aish Kodesh	Nassau
300	Chasidic Center of Nassau County	Nassau
301	Hands Across Long Island	Islip
316	Congregation D'Chacidei Breslov	NYC
319	International Baptist Center	NYC
323	Rosa Lee Young Childhood Center	Nassau
326	Congregation Lubavitch Chabad	Nassau
342	Town of Milo (Yates Co.)	Town of Milo
354	Yeshiva Torah Mitzion	Nassau
361	Beis Hamedrash Sharei Tefilah*	Ramapo

<u>Chap.</u>	<u>Owner</u>	<u>Location</u>
364	Great Neck Center for Visual and Performing Arts	Nassau
365	Garden City Park Fire District	Nassau
366	Mt. Sinai Hospital	NYC
370	Haitin Baptist Church of Westbury	Nassau
371	Sephardic Congregation of Five Towns	Nassau
372	Christ Episcopal Church	Southampton
378	Society of St. Vincent de Paul	Huntington
384	Great Neck Synagogue	Nassau
385	Chabad of Roslyn	Nassau
643	Town of Brookhaven	Brookhaven
671	Urban League of Long Island, Inc.	Islip

\* Amends a Chapter of the Laws of 2001.

### Correction of Errors

Chapter 616 revises the so-called “Correction of Errors” procedures (RPTL, Article 5, Title 3) in several respects. First, the new law authorizes the board of assessment review, at its “second” meeting held to approve clerical-type corrections to the final assessment roll (see, RPTL, §553(3)(a)), to act on a petition from the assessor to correct an entry of a partial exemption on the immediately preceding year’s assessment roll for a parcel that was not eligible for such exemption, provided that title to such property has not been conveyed since the filing of such roll (see new RPTL, §553(f-1)). The assessor will be required to notify the board of assessment review and the taxpayer when such a correction is sought (§553(2)).

Under prior law, in general, an incorrectly granted partial exemption could be corrected on a current assessment roll (as an error in essential fact – RPTL, §550(3)(e)), but not once that assessment roll became a tax roll. Since most school districts are the first tax levying body to use the assessment roll for tax purposes, and that levy occurs only two months after the final assessment roll is filed (RPTL, §§516(1), 1306(1)), there previously had been but the briefest opportunity to cancel wrongly approved partial exemptions, at least for school purposes. This portion of the new law should allow sufficient time for many (perhaps most) wrongly granted partial exemptions to be discovered.

Second, the new law provides that when a county director of real property tax services recommends correction of a tax roll and/or bill, or recommends payment of a tax refund, on the grounds that a clerical-type error had occurred, the county director is also required to ascertain if the same error appears on a current assessment roll as well. If so, he or she would be obliged to file a copy of the recommendation for correction with the board of assessment review, which would consider it as an assessor’s petition pursuant to section 553 (see, §556(4)(b)). Before, if a county director found that an error appeared on a tax roll, but the assessor did not also petition the board of assessment review to conform the assessment roll, that same error would be perpetuated in subsequent tax levies, necessitating another tax roll/bill correction or tax refund.

Third, this new law obviates the need for actual payment of the allegedly incorrect tax when seeking correction of a tax bill after the tax warrant has expired. Instead, the law would allow for a credit against the outstanding tax liability, and associated interest and penalties, upon approval of the application (§556). As a result, the applicant could simply submit the application without paying the tax in full, and, if approved, pay the net amount due. Under prior law, if the refund provisions of section 556 were invoked, a taxpayer first had to tender the purportedly erroneous tax and then seek a refund of the incorrect portion thereof.

#### Payment via Private Delivery Services

Chapter 568 provides that when a real property tax payment is transmitted to the collecting officer by a designated delivery service (*i.e.*, one that has been designated by the United States Secretary of the Treasury pursuant to section 7502 of the Internal Revenue Code, subject to any withdrawals or additions made pursuant to section 691(a)(2)(A) of the Tax Law) the tax shall be deemed to be paid as of the date recorded or marked by such service in the manner provided by section 7502 of the Internal Revenue Code. The law further provides that ORPS shall notify tax collecting officers whenever there is a change in the list of authorized delivery services. In addition, the legislation clarifies that when a postmark does not appear on the envelope or is illegible, the payment shall be deemed to have been made on the date it was delivered to the collecting officer.

### **C. GOVERNOR'S APPROVAL AND DISAPPROVAL MESSAGES**

#### **Approval Messages**

*[None issued in 2002 on any real property tax-related bills.]*

#### **Disapproval Messages**

#### State Agency Adjudicatory Proceedings

VETO MESSAGE No. 34

TO THE SENATE:

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

Senate Bill Number 2190-A, entitled:

"AN ACT to amend the state administrative procedure act, in relation to adjudicatory proceedings"

NOT APPROVED

This bill would amend Article 3 of the State Administrative Procedure Act ("SAPA"), which governs the conduct of adjudicatory proceedings by state agencies. The bill would define "presiding officers" as persons designated and empowered by an agency to conduct adjudicatory proceedings, including hearing officers, hearing examiners and administrative law judges. It would require any state agency that holds adjudicatory proceedings to create an administrative unit made up exclusively of supervisors, presiding officers and support staff. The personnel in this administrative unit could report only to the agency head, and all unit employees would be required to be members of the competitive class of the civil service.

The bill would also establish a code of ethics for presiding officers that would disqualify presiding officers in a variety of circumstances, including in situations where the presiding officer had "previously dealt in a material way with the specific matter at issue" or obtained "material information concerning the proceeding by reason of being employed at the agency and that information was received outside the presence of all parties to the proceeding." In the event that a presiding officer engaged in a prohibited communication, the agency or presiding officer would be required to "accept a motion to determine why such proceeding or claim should not be dismissed or denied against the movant on account of that communication."

In addition, the bill would provide that a party may file an affidavit of disqualification based on any violation of the code of ethics. The agency would be required to inform the movant of its decision on that motion within two calendar days of receipt of the affidavit. If the agency declined to disqualify the presiding officer or failed to respond to the affidavit within five days, the movant would be permitted to file an affidavit of disqualification with the Attorney General, who would be required to inform the agency of his or her decision within 15 business days. The Attorney General's decision would be binding on the parties, and would become part of the administrative record. The Attorney General would be authorized to solicit an advisory opinion from the State Ethics Commission in connection with the foregoing. The bill would take effect 180 days after it was approved.

Current law already provides a comprehensive framework for administrative adjudication by state agencies. Executive Order No. 4.131, as continued by Executive Order 5.3, requires that agencies establish an independent administrative unit for presiding officers and staff, insofar as practicable. It requires that hearing officers and the administrative unit report only to the agency head, the general counsel of the agency or a supervisor of hearing officers, and in no event to a bureau, office or division with programmatic responsibilities that are the subject of hearings before them. Agencies must also provide opportunities for non-agency personnel to compete for open presiding officer positions. Executive Order No. 4.131 also specifically provides for agencies to share hearing officers between them.

Current law also provides for the ethical adjudication of hearings. SAPA prohibits a member or employee of an agency assigned to an adjudicatory function from communicating with any person or party in connection with factual disputes before the agency, or on legal issues with any party or representative, except that an agency member may communicate with other agency members and have the aid and advice of agency staff. Executive Order 4.131 further prohibits a hearing officer from communicating with any person in connection with any issue

that relates to the merits of an adjudicatory proceeding, except on notice and the opportunity for all parties to be heard. It also prohibits agencies from punishing or rewarding hearing officers based on the outcomes of hearing. The Public Officers Law prohibits various other forms of unethical conduct, as do the Judicial Code of Conduct, case law and advisory opinions of the State Ethics commission, all of which may be applicable to administrative hearings.

According to its sponsors, the bill is intended to raise the standard of agency hearings, reduce the potential for bias by hearing officers, and reduce the public's perception that agency hearings are biased. The sponsors contend that the bill would have only minimal fiscal impact on state operations. While the sponsor's goals of improving the administrative hearing process are laudable, the bill suffers from serious technical defects and would impose substantial new costs and administrative burdens upon state agencies in this time of fiscal uncertainty. Accordingly, I am constrained to disapprove the bill.

The bill would impose new and costly administrative burdens upon state agencies in at least four respects. First, establishing an independent administrative unit for agencies with a small number of hearing officers would be cost prohibitive. The Office for Mental Health, Racing and Wagering Board, Office of Real Property Services and Department of Transportation all urge disapproval on this ground. In contrast, current law requires separate administrative units only when practicable.

Second, requiring an administrative unit to report directly to an agency head is problematic. As the Attorney General observes in recommending disapproval, this provision would burden agency heads with direct supervision of a unit. And, as the State Education Department notes in also recommending disapproval, this provision may violate certain federal laws that prohibit a policy maker from directly supervising administrative hearings. In contrast, current law requires that hearing officers and the unit itself, if one has been established, report only to the agency head, the general counsel or a supervisor of hearing officers and prohibits hearing officers from reporting a bureau, office or division with programmatic responsibilities that are the subject of hearings before them.

Third, as the Attorney General and the Public Employment Relations Board point out, the bill's requirement that all unit personnel be within the competitive class of the civil service usurps the Civil Service Commission's authority over such determinations. While some personnel involved in administrative adjudication properly have been included within the competitive class, supervisors and presiding officers who adjudicate complex matters may hold positions that are unsuitable for competitive examination. For this reason, the Public Service Commission, whose administrative law judges adjudicate complex rate-setting cases, objects to this provision. In addition, the bill would require new civil service classifications to be created and new examinations designed and administered. The Governor's Office of Regulatory Reform ("GORR"), which also urges disapproval of the bill, argues that the six-month effective date of the bill is inadequate for these purposes.

Finally, the bill's requirement that unit personnel report directly to agency heads appears to prohibit personnel at one agency from adjudicating hearings on behalf of another agency. Personnel from the Office of Temporary and Disability Assistance ("OTDA") currently conduct

certain administrative hearings on behalf of the Department of Health, the Department of Labor and the Office for Children and Family Services, an arrangement that results in significant cost savings to the state. In addition, the Office of Real Property Services and the Office for Mental Health interpret the bill as prohibiting them from utilizing the services of independent hearing officers on a per diem basis, thereby abolishing an effective and cost-efficient approach, particularly for agencies with a small volume of hearings.

For these reasons, the Division of the Budget estimates that the bill would require agencies to hire upwards of 200 new employees at a cost of greater than \$10 million annually.

In addition to the administrative burdens and fiscal impact associated with the bill, the provisions governing ethical standards for presiding officers suffers from serious technical flaws. Specifically, the State Ethics Commission has expressed concern regarding the new code of ethics established by the bill. The bill incorporates Public Officers Law Section 74 by reference, but it also separately prescribes certain of the prohibitions of that section of law but not others. The Ethics Commission believes that this will cause confusion and could potentially lead to unintended consequences.

Moreover, there appears to be an inconsistency between the provision in the bill that would prohibit the presiding officer from obtaining "material information concerning an adjudicatory proceeding by reason of being employed by the agency" and Section 307 of SAPA, which specifically allows certain presiding officers to communicate with, and receive aid and advice from, agency staff.

In addition, the breadth the Code of Ethics prohibitions is highly problematic and could engender unnecessary litigation of claims. The Code of Ethics would prohibit a presiding officer from hearing a matter in which he or she had previously "dealt in a material way with the specific matter" at issue, and would prohibit the presiding officer from obtaining "material information concerning an adjudicatory proceeding by reason of being employed by the agency." These provisions would discourage presiding officers from becoming expert in a particular field and applying their expertise in a number of different forums throughout an agency, including technical adjudicatory hearings. The Public Service Commission, for example, relies on administrative law judges who adjudicate complex rate appeals to counsel the agency on the same rate setting matters. In urging disapproval, PSC complains that the bill could curtail the effective use of its resources. The broad nature of these prohibitions might result as well in significant litigation concerning whether a presiding officer had learned some information that required disqualification. Current law already prohibits presiding officers from improperly communicating with any person in relation to the merits of an adjudicatory proceeding, except for ministerial matters and questions of law, on which they may communicate with supervisors, agency attorneys and other hearing officers.

The bill's provision for addressing violations of its code of conduct are unworkable in a variety of respects. First, allowing a claim or proceeding to be dismissed because the presiding officer engaged in a prohibited communication -even when that officer was blameless or when the communication could not possibly have been prejudicial - is draconian. Under current law,

the remedy for such a violation is disqualification and, where appropriate, discipline of the officer -not dismissal of the administrative proceeding.

Second, the time frames for adjudicating disqualification motions are problematic. Many agencies would be unable to resolve these motions within the two calendar days provided by the bill. Conversely, other agencies, such as the State Education Department and the Office of Temporary and Disability Assistance, operate under strict federal or state deadlines for determining complainants' rights, and could not accommodate a 15 day delay to refer disputes to the Attorney General.

And, as the Attorney General has noted, the provisions that require him to resolve disqualification motions will create conflicts of interest. The Attorney General is often a party to adjudicatory proceedings, and he frequently defends State agencies from legal challenges to agency determinations. Under these circumstances, assigning the Attorney General the additional responsibility of adjudication of disqualification motions is highly problematic. Moreover, as the State Education Department notes, the role the bill would assign to the Attorney General could violate federal law.

For the foregoing reasons, the Attorney General, the State Education Department, the Division of the Budget, the Department of Correctional Services, the Office of Temporary Disability Services, the Department of Agriculture and Markets, the Office of Mental Health, the Public Employment Relations Board, the Workers' Compensation Board, the Racing and Wagering Board, the Department of Motor Vehicles, the Department of Transportation, the Governor's Office of Regulatory Reform and the Public Service Commission all urge my disapproval of the bill.

The bill is disapproved.

(signed) GEORGE E. PATAKI

#### School District Surplus Funds

Senate Bill No. 6520-A, Veto # 49: Pocket Veto – No Veto Message Issued

*[Note: If this bill had been approved by the Governor, it would have amended section 1318(1) of the RPTL to increase the allowable percentage of each current school year's budget that the school authorities may retain in reserve, from two percent to four percent (three percent for 2002-03). Due to the veto, the two percent limit remains intact.]*

#### **D. LEGISLATIVE STATUS CHART**

See the Legislative Status Chart published online.

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