

**SUMMARY OF
2008
REAL PROPERTY TAX LEGISLATION**



STATE BOARD OF REAL PROPERTY SERVICES

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SUMMARY OF 2008 REAL PROPERTY TAX LEGISLATION

NEW YORK STATE BOARD OF REAL PROPERTY SERVICES

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Summary of 2008 Real Property Tax Legislation

This document provides general summaries of the most noteworthy legislation enacted in 2008 relating to real property tax administration. These descriptions are intended only as a summary of the key elements of the new laws. For a more detailed and authoritative account of what these new laws do, the best resource is, of course, the laws themselves.

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Note: The terms “State Board” and “ORPS” as used herein refer to the New York State Board of Real Property Services and the Office of Real Property Services, respectively, while “RPTL” means the Real Property Tax Law.

A. LEGISLATION

1. ASSESSMENT ADMINISTRATION

Public Access to Property Inventory Information

Chapter **479**; S.8328-A • RPTL §§ 501(1), 1406(6)

Chapter **223**; S.962-C • Public Officers Law §89(2)(c)(iv)

Two separate measures ensure that the public can, upon request, have access to “assessment inventories” – the property details maintained by assessors for the purpose of valuation. Inventories include such information as square footage, number of bedrooms, style of house and various other details that may be relevant to the value of a property. Such information can be useful to property owners interested in determining the market value of their properties and, potentially, for purposes of appealing assessments. These new laws effectively overrule a 2006 court decision which had placed the availability of such information in doubt (Matter of Comps, Inc. v. Town of Islip, 33 A.D.3d 796, 822 N.Y.S. 2d 768 (2d Dept., 2006)).

Chapter **479** amends RPTL §500(1) to require city and town assessors to maintain inventories of all real property. It also clarifies that the physical characteristics of real property included in assessors’ inventories constitute a public record and that the disclosure of such inventory data is not an unwarranted invasion of personal privacy for purposes of the Freedom of Information Law (specifically, Public Officers Law [POL], §89(2)). In addition, it adds a new subdivision six to RPTL §1406, imposing similar requirements as to village assessors in those villages that retain their assessing unit status.

Chapter **223**, which generally relates to the Freedom of Information Law, includes a provision which makes it clear that it is not an unwarranted invasion of personal privacy to release records relating to the right, title or interest in real property, or relating to the inventory, status, or characteristics of real property.

As a result of these enactments, ORPS will again, upon request, provide property inventory data in its possession, subject to other applicable FOIL exceptions for such items as income and expense data.

Tax Exemption Impact Reporting

Chapter **258**; S.7538 • RPTL §495

Chapter **258** requires counties, cities, towns, villages and school districts to attach to their tentative or preliminary budgets an exemption report showing how much of the total assessed value on the applicable final assessment roll or rolls are exempt from taxation. It will list:

- Every type of exemption granted by the taxing authority, and the cumulative impact of each type of exemption (in either dollar amount of assessed value or as a percentage of the total assessed value on the roll);
- The cumulative amount expected to be received from recipients of each type of exemption as payments in lieu of taxes or other payments for municipal services; and
- The cumulative impact of all exemptions granted.

Notice of the report is required to be included in any notice of the preparation of the budget otherwise required by law. Also, the report is required to be posted on any bulletin board maintained by the budgeting authority for public notices and on any website maintained by the budgeting authority. In addition to being attached to the tentative/preliminary budget, the report also will be part of the final budget. The first budgets to be impacted by the new law will be those prepared by most counties and towns in the fall of 2008. For those municipalities that use RPS Version 4 software for assessment administration, ORPS has developed a standardized report to meet the bulk of the exemption reporting requirements.

Assessor's Staff and BAR Hearings

Chapter **606**; S.4571 • RPTL §§525(2)(a), 526(4)

Chapter **606** permits an assessor who serves multiple jurisdictions to designate one or more members of his or her staff to attend Board of Assessment Review (BAR) hearings. The designee would have the same powers and authority as the assessor at any such hearing, including the right to be heard on any complaint filed with the BAR, so long as those remarks are made in an open and public hearing of the BAR, and to have his or her remarks recorded in the BAR's minutes. Note that a multi-jurisdictional assessor may also ask the governing body of one or more of the assessing units to reschedule Grievance Day to eliminate the scheduling conflicts (RPTL, §512(1-a)).

Residential Assessment Ratios

Chapter **78**; S.4963-A • RPTL §738

Chapter **78** changes the manner in which residential assessment ratios (RARs) are computed. The RAR for an assessing unit shall be equal to the level of assessment of residential property in the assessing unit as determined in the market value survey conducted by the State Board to establish State equalization rates. Chapter 78 applies to residential assessment ratios for assessment rolls with taxable status dates on and after September 1, 2008, and to proceedings to review assessments appearing on such assessment rolls.

Financing of Tax Certiorari Refunds

Chapter **122**; S.6969 • Local Finance Law § 11.00(33-a)

Chapter **122** extends until June 15, 2013 subdivision 33-a of section 11.00 of the Local Finance Law (enacted as chapter 719 of the Laws of 1980) which provides for the bonding of refunds of taxes due as a result of RPTL, Article 7 proceedings.

2. EXEMPTION ADMINISTRATION

Agricultural Buildings Exemption Extender

Chapter **544**; S.6916 • RPTL §483

Chapter **544** extends the Agricultural Buildings exemption to improvements completed before January 1, 2019. Under Real Property Tax Law §483, a ten-year exemption is available to the extent of any increase in value attributable to the construction or reconstruction of structures or buildings essential to the operation of certain agricultural or horticultural lands. The exemption had been limited to improvements constructed prior to January 1, 2009.

Agriculture; Beekeeping Activities

Chapter **341**; A10687-a • Agriculture & Markets Law §301(2)(j), (4)(k) & (16)

Chapter **341** extends the Agricultural Assessment program to farms engaged exclusively in beekeeping activities. It defines “apiary products” to include “honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs and queens,” and defines “lands used for agricultural purposes” to include no more than ten acres of land used to support an apiary products operation that owns such land. The land used to support an apiary products operation includes the land under a structure within which apiary products are produced, harvested and stored for sale; and a buffer area maintained by the operation between the operation and adjacent homeowners. Any rented land associated with an apiary products operation is not eligible for an agricultural assessment under this legislation.

Agriculture; Composting, Mulch and Other Biomass crops

Chapter **536**; S.5357-A • Agriculture & Markets Law §§301, 305-a, 308 and 308-a
Approval Message # 30

Chapter **536** allows a commercial crop grower who produces compost or mulch from excess agricultural waste and off-farm generated organic matter to claim a maximum annual gross sales value of \$5,000 from the sale of such material to help qualify the land so used for an agricultural assessment. Land used by a commercial grower for such a composting facility would be entitled to certain right-to-farm protections. This enactment takes effect on January 1, 2009.

Agriculture; Non-profit Research

Chapter **611**; S.6922-A • Agriculture & Markets Law § 301(4)(a-1)

Chapter **611** expands the definition of “lands used for agricultural production” to include land rented to nonprofit organizations that use the land to conduct agricultural research intended to improve the quality or quantity of crops, livestock or livestock products. Any crops, livestock or livestock products produced on such land are not subject to a minimum gross sales value requirement.

Forest Lands; Certification

Chapter **396**; A.872 • RPTL §480-a

Chapter **396** allows a forest owner to receive the forest tax exemption authorized by section 480-a of the Real Property Tax Law without committing to a management plan approved by the Department of Environmental Conservation (DEC), as long as the owner participates in a privately-administered forest certification program recognized by DEC in its rules.

STAR

Chapter **57**, Pts. W & S; S.6807-C • RPTL §§425 and 1306-b, Education Law §2202(2-a)(b)

Chapter **57** revises the STAR Exemption and Middle Class STAR Rebate Program in various respects, most notably:

- **Basic Rebate Phase-in:** The scheduled increase in the amount of rebate checks for recipients of the Basic STAR exemption has been delayed by one year. §1306-b(3)(b)(i), (ii) and (iii). (Note that this change does not affect recipients of the *Enhanced* STAR exemption, whose 2008 rebate checks have increased as originally scheduled.)
- **Floor:** The maximum allowable annual decrease in local STAR exemptions has been changed from five percent to 10 percent for the 2008-2009 school year and 11 percent for the 2009-2010 and subsequent school years. RPTL §425(2)(e).
- **Limited partnerships:** Eligibility for the STAR exemption has been extended to dwellings owned by limited partnerships, lawfully created to hold title for estate planning and asset protection, provided that the partners who primarily reside on the exempt property pay all real property taxes and other costs associated with the property's ownership. RPTL §425(3)(e). A limited partnership created for commercial purposes may not receive the exemption, however.
- **Ownership:** Certain parties who do not own property in fee but who nonetheless have been granted STAR – namely, life tenants, trust beneficiaries, limited partners and vendees in possession – must be listed as the property owners on assessment rolls. RPTL §425(7)(d). As a result, tax bills and rebate checks will be sent to them rather than to the remaindermen, trustees, partnerships or vendors, but such parties may request duplicate tax bills if they so desire.
- **Reporting:** The deadline for assessors to report property ownership and STAR exemption changes to ORPS has been extended from May 1 to August 1. RPTL §1306-b(2)(b)(ii).
- **School district notices:** Annual school district budget notices no longer need to attempt to compare the increase or decrease in school taxes on a hypothetical \$100,000 home that would result from the adoption of the proposed budget. Instead, they will simply need to include an estimate of the basic STAR tax savings that would be available to eligible homeowners if the proposed school budget is adopted. Education Law § 2202(2-a)(b).

Veterans (Cold War); Technical Amendments

Chapter **6**; S.6509 • RPTL §458-b(6)

Chapter **6** amends several provisions of the new Cold War veterans exemption. A veteran, including a reservist, who has received an honorable discharge, having an eligible funds

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exemption may opt instead to receive an alternative veterans exemption or the Cold War veterans exemption (L 2007, c. 655, L. 2008, c.384). Other notable changes to this exemption include:

- The definition of “Cold War veteran” is changed by deleting the requirement that the applicant must have served for more than one year on active duty during the defined Cold War period (i.e., September 2, 1945 - December 26, 1991). The applicant must have served on active duty, other than active duty for training, during the defined time period and been released or discharged under honorable conditions.
- The Cold War Recognition Certificate is no longer required, since the applicant must provide proof of honorable service during the defined Cold War period.
- The definition of “qualified residential real property” excuses a veteran’s or an unremarried surviving spouse of a veteran’s absence from the residence based on illness or institutionalization. Previously this excused absence was permitted for five years only.
- The law clarifies that a veteran’s 10 years of eligibility for the basic exemption commences on the assessment roll based upon the taxable status date occurring on or after the effective date of the local law adopting the exemption, provided the veteran owns qualifying real property on such date. Where a veteran first acquires qualifying property after such date, the veteran’s exemption eligibility period will commence with the assessment roll based on a taxable status date occurring at least 60 days after acquisition, unless he or she applies within the 60 day period.
- A veteran need not reapply annually for the exemption, but a reapplication is required if the veteran has been receiving the additional exemption based upon his or her disability rating and receives a change in such rating. This equates the refiling provision to that applicable to the alternative exemption.

Veterans (Alternative); Reservists

Chapter **384**; S.8455 • RPTL §458-a

Chapter **384** amends the definition of “veteran” for purposes of the alternative veterans’ exemption to include therein a member of a reserve component of the Armed Forces, who has received an honorable discharge or release, but is still a member of the reserves, provided the other statutory requirements are met.

Veterans (Eligible funds and Alternative); Transfers by Spouses

Chapter **503**; A.4262-A • RPTL §§ 458(9), 458-a(8)

Under the Eligible Funds and Alternative Veterans Exemptions, a taxing jurisdiction may adopt a local law allowing a veteran to receive a prorated transferred exemption upon purchasing a replacement home in the same taxing jurisdiction as his or her former (and formerly exempt) home (RPTL §§ 458(9), 458-a(8)). Chapter **503** enables taxing jurisdictions to extend this privilege not just to veterans but to the spouses and unremarried surviving spouses of veterans.

Retroactive Exemptions for Specific Properties

In a number of assessing units, the assessor has been 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

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cases, the entity had title but simply failed to apply by taxable status date. The affected assessing units, entities involved, and Chapter Numbers are identified in the Legislative Status Chart appearing later in this Summary. Note that an Approval Message was issued in relation to one of these enactments (Chap. 142, Approval Message # 11).

3. MISCELLANEOUS

Freedom of Information Law

Chapter **223**; S.962-C • Public Officers Law §§ 87 & 89, CPLR § 8019(f)

Chapter **351**; S.3850 • Public Officers Law § 89(9)

Chapter **499**; A.1975 • Public Officers Law § 87(3)

Chapter **223** makes a series of amendments to the Freedom of Information Law (FOIL) (Public Officers Law, Art. 6), which applies both to the State and to local governments. Its key provisions are the following:

- Though FOIL does not require an agency to prepare a record it does not possess, it now provides that if an agency has the ability, with reasonable effort, to retrieve or extract a record or data maintained in a computer storage system, it must do so. Any programming necessary to retrieve a record maintained electronically and to transfer that record to the medium requested or to allow the requester to view the record is not to be considered the preparation or creation of a new record.
- Agencies may now charge an amount equal to the hourly salary of the lowest paid employee able to prepare the record plus the actual cost of the storage device or media provided to the requester plus the actual costs to the agency of engaging outside professional services to prepare the copy (should outside help be needed). However, an agency may not charge for the first two hours of its employee's time in preparing a record and it must notify the requester if more than two hours of employee time or if outside professional services will be necessary.
- Records relating to the right, title or interest in real property, or relating to the inventory, status, or characteristics of real property may once again be released. (For further discussion of the inventory disclosure issue, see pages 1-2 above.)

Chapter **351** provides that, when agency records maintained electronically include both items subject to public inspection and copying and items that may be withheld from public disclosure, in designing its information retrieval methods, the agency, whenever practicable and reasonable, must do so in a manner that will permit segregation and retrieval of the available items so as to provide maximum public access.

Chapter **499** requires agencies subject to FOIL to update their subject matter lists annually and to conspicuously indicate on those lists the date of the most recent update. State agencies with websites must post their subject matter lists on their websites and link them to the Committee on Open Government's (COG) website. State agencies that do not have websites are required to "arrange" to have their lists posted on the COG website.

Open Meetings Law

Chapter **397**; A.1033-a • POL §107(2)

Chapter **397** amends section 107(2) of the Public Officers Law, which is a provision of the Open Meetings Law [OML], to require a court to impose on a public body subject to the OML costs and reasonable attorney's fees when it finds that such public body took a vote in "material violation" of the OML or held "substantial deliberations" in private prior to taking a

vote, unless there was a “reasonable basis” for the public body to believe that a closed session could properly be held. Under current law, section 107(2) simply provides that a court has discretion to award such costs and fees to a successful party, the principal enforcement remedy for a violation of the OML being nullification of the public body’s action or a portion thereof (Public Officers Law, §107(1)).

Mortgage Foreclosure Relief

Chapter **472**, S8143-A • Various statutes

Chapter 472 is a comprehensive measure intended to provide immediate relief for those at risk of losing their homes due to mortgage foreclosure, while enacting reforms to help avoid a recurrence of the recent instability. It does so by: requiring greater protections for borrowers; creating a subprime mortgage lending statute that defines subprime mortgages and sets standards and limitations on lenders and brokers; setting standards and limitations on home loans in general, requiring the registration of mortgage loan servicers; establishing the crime of residential mortgage fraud; and regulating “distressed property consultants.” Specific statutory changes include amendments to the Real Property Actions and Proceedings Law, Real Property Law, the Civil Practice Law and Rules, the Banking Law, and the General Obligations Law.

Federal Income Tax Deduction for Non-Itemizers

Public Law **110-289**; HR 3211 (§3012) • Internal Revenue Code §63(c)(1)

The Federal Housing and Economic Recovery Act of 2008, enacted by Congress in response to the subprime mortgage crisis, includes a provision which grants a federal income tax deduction for local real property taxes paid in 2008 by taxpayers who do not itemize their deductions on their 2008 income tax returns. The deduction is generally \$500 (\$1,000 in the case of a joint return) or the local real property taxes paid, whichever is less. This legislation does not impact New York State income tax returns.

Adverse Possession; Claim of Right

Chapter **269**; S.7915-C • Real Property Actions And Proceedings Law §§501, 511, 521
Approval Message No. 13

Chapter **269** bars a claim of adverse possession without a “claim of right,” meaning “a “reasonable basis for the belief that property belongs to the adverse possessor or property owner” The claimant’s beliefs had not been an element of an adverse possession claim under prior law. This legislation is intended to overrule the decision in Walling v. Przybylo (7 N.Y.3d 228, 818 N.Y.S.2d 816 [2006]), in which the Court of Appeals found in favor of the adverse possessors, holding that conduct prevails over knowledge of true ownership, particularly where the true owners have acquiesced in exercise of ownership rights by the adverse possessors.

Restrictions on Use of Social Security Numbers

Chapter **279**; S.8376-A • Public Officers Law §96-a, Labor Law §203-d, and other statutes

Chapter **279**, a measure aimed at deterring identity theft, includes restrictions upon the use of Social Security Numbers (SSNs) by the state and its local governments, as well as by

employers. In general, under new §96-a of the Public Officers Law, which becomes effective January 1, 2010, the state and its local governments may not: intentionally communicate SSNs to the general public; print SSNs on cards or tags needed to access public benefits or services; require individuals to transmit their SSNs over the internet (unless the connection is secure or the SSNs are encrypted); require SSNs to be used to access a website (unless a password or other authentication method is also required); include full 9-digit SSNs in mailings, subject to certain exceptions; or encode SSNs in objects such as swipe cards. Similarly, under new §203-d of the Labor Law, effective January 3, 2009, an employer may not: publicly post employees' SSNs; visibly print SSNs on identification badges or cards; place SSNs in files with unrestricted access; or communicate employees' personal identifying information (e.g., SSNs, home addresses and telephone numbers, personal e-mail addresses, etc.) to the general public.

Sales of Certified Deed Copies

Chapter **485**; S.8517 • General Business Law § 393-d

Chapter **485** requires that anyone who sells or offers to sell a certified copy of a property deed must give a written notice to the purchaser prior to the sale, generally informing him or her that certified deed copies are available at the County Clerk's office for a modest fee. The notice must be in 12 point boldface type and must contain the exact wording set forth in the statute.

State Budget; Real Property Tax-Related Appropriations

Chapters **50** and **53**; S.6800-D and S.6803-D

Chapter **50** enacts the 2008-09 Public Protection and General Government Budget, which, among other things, provides \$21.397 million in aid for improved real property tax administration as part of the \$66.44 million ORPS budget (*pp.235-237*). The State Operations part of the ORPS budget is \$45.043 million. Chapter 50 also includes \$184.611 million in appropriations for payments of taxes on certain State lands (*pp.295-296*). Chapter **53** enacts the 2008-09 Education, Labor and Family Assistance Budget, which, among other things, appropriates \$4.97 billion to pay for tax relief under the STAR program, including Middle Class STAR rebates (*p.88-89*).

Items of Local Interest

Other items that are of local interest include the following:

- Two jurisdictions – the City of Syracuse (Chapter **370**; Approval Message #16) and the Rome City School District (Chap. **635**; Approval Message #44) – have been separately authorized to exempt improvements to residential real property meeting certain criteria.
- The Erie County assessment calendar has been revised to conform to the calendar that generally applies elsewhere under the RPTL (Chap. **413**).
- The City of Amsterdam has been authorized to conduct tax lien sales (Chap. **455**).
- The Village of South Blooming Grove has been authorized to adopt a fiscal year that begins on January 1st per RPTL §1402(3) and Village Law §5-510(3),(4) (Chap. **482**).
- Legislation addressing issues in Oneida and Madison Counties related to the taxable status of Oneida Indian Nation property has been extended by three years (Chap. **146**).

Miscellaneous

- Real Estate Transfer Tax authorizations were adopted or amended for Westchester and Putnam Counties, the Town of Northeast and the Peconic Bay communities (Chaps. **17**, **333**, **349**, and **373**).
- The State-owned thoroughbred racetracks in Saratoga, Nassau and Queens Counties have been expressly subjected to taxation (Chaps. **18** and **140**).
- The Town of Hempstead has been authorized to continue paying PILOTs in relation to certain properties therein (Chap. **124**).
- Nassau County local laws pertaining to the Cold War Veterans Exemption have been ratified (Chap. **495**).
- The calculation of Adjusted Base Proportions has been “capped” for the 2008 assessment rolls of Nassau County (1%), New York City (0%), and the Approved Assessing Units in Nassau and Suffolk Counties (1%) (Chaps. **84**, **118**, **123** and **145**).
- Several programs that apply solely or primarily to New York City have been enacted or amended, specifically:
 - The 421-a exemption for certain multiple dwellings has been revised (Chap. **15**);
 - The tax abatement for residential cooperatives and condominiums in Class 2 has been extended (Chap. **109**);
 - The Industrial and Commercial Incentive Program has been replaced with an Industrial and Commercial Abatement Program (Chaps. **119**, **138**);
 - Certain vacant land in Manhattan has been removed from Class 1 (Chap. **332**);
 - The 421-b exemption for certain private dwellings has been extended (Chap. **347**);
 - “J-51” benefits have been authorized for certain multiple dwellings (Chap. **383**);
 - Tax abatements for “Green Roof” installations and for solar electric generating systems have been authorized (Chaps. **461**, **473**);
 - The Senior Citizens Rent Increase Exemption (“SCRIE”) Program has been extended to apply to two contiguous units that are combined into one (Chap. **531**).

B. GOVERNOR'S APPROVAL AND DISAPPROVAL MESSAGES

APPROVAL MESSAGES

- #11: Retroactive Exemption; Mosdos Torah, Inc.
- #13: Adverse Possession; Claim of Right
- #16: Residential Exemption; City of Syracuse
- #30: Agricultural Assessments; Composting and Mulching
- #44: Residential Investment Exemption; Rome City School District

APPROVAL MEMORANDUM - No. 11 Chapter 142

MEMORANDUM filed with Assembly Bill Number 9306, entitled:

"AN ACT authorizing Mosdos Torah, Inc., to file an application for a real property tax exemption"

APPROVED

Although not-for-profit corporations are statutorily entitled to tax exemptions for property held for charitable purposes, these non-profit entities nonetheless must apply for these tax exemptions each year, and local tax assessors must evaluate the charitable uses of the property. Sometimes a not-for-profit property owner simply fails to apply (or reapply) before the local taxable status date, and at other times a not-for-profit acquires property after the taxable status date, which means that the property becomes subject to taxation for that year.

According to the sponsors of this bill, Mosdos Torah, Inc. is a religious not-for-profit corporation that acquired property in the Town of Ramapo, Rockland County, in September 2004. Because it acquired the property after the Town's taxable status date, Mosdos Torah was not able to file an application for a real property tax exemption for the 2004 Town assessment roll, and then failed to apply for a tax exemption for the 2005 assessment roll. As a result, taxes went levied but unpaid, and Mosdos Torah has accrued over \$28,000 in outstanding real property taxes and penalties. This bill therefore authorizes the Ramapo Town Assessor to accept late applications for real property tax exemptions from Mosdos Torah for the 2004 and 2005 assessment rolls.

The Office of Real Property Services recommends that this bill be vetoed on the grounds that it violates Article III, section 17 of the State Constitution, which bars the Legislature from passing private or local bills granting a property tax exemption to any person, association, firm or corporation. As drafted, this bill does not violate that constitutional provision, because it does not directly grant tax exemptions to Mosdos Torah, and instead simply authorizes the Town of Ramapo to accept the late applications. However, it appears that the State Legislature required the Town of Ramapo to adopt a resolution agreeing to grant the tax exemptions before it would consider this bill. Thus, the practical effect of this bill would be to grant a property tax exemption in the manner that the State Constitution seeks to prohibit.

Fortunately, the Town of Ramapo is not legally bound by its prior resolution agreeing to grant the tax exemption, and remains free not to do so. Because the Town retains the authority to decide not to grant the tax exemption, this legislation does not run afoul of Article III, section 17 of the State Constitution.

The bill is approved.

(signed) DAVID A. PATERSON

APPROVAL MEMORANDUM - No. 13 Chapter 269

MEMORANDUM filed with Senate Bill Number 7915-C, entitled:

"AN ACT to amend the real property actions and proceedings law, in relation to adverse possession"

Approval Messages

APPROVED

Adverse possession is a legal mechanism whereby title to real property is transferred from the true owner to the actual possessor of the property. The standards for acquiring title by adverse possession relate to the course of conduct that could or should give a true owner notice that someone is possessing and claiming ownership of the property. If an adverse possessor engages in the requisite course of conduct for the requisite period of time (10 years in New York), and the true owner fails to take action to recover the property, then the true owner thereafter is barred from bringing an action to assert ownership and eject the possessor. This legal mechanism is essential to resolve a wide range of title defects and other property disputes.

As the Court of Appeals reaffirmed in Walling v Przybylo (7 NY3d 228 (2006)), an adverse possession claim can succeed even if the claimant knows that the possessed property belongs to someone else. Last year, the Legislature sought to reverse this decision by passing a bill providing that an adverse possession claim would be defeated if the claimant or any person in the claimant's chain of title had actual knowledge that the property was owned by someone else. This bill would have undermined the 10-year possession period by shifting from a focus on the owner's notice of adverse conduct to the possessor's knowledge of other ownership claims, and would have required claimants to prove the absence of knowledge in their chains of title. These changes would have made it extremely difficult to resolve many property title disputes, prompting Governor Spitzer to veto the bill (Veto 153 of 2007).

This bill takes a different approach to meet the legislative goal of barring "bad faith" adverse possession claims by requiring an adverse possessor to have a reasonable basis for believing that the property belongs to the possessor. The bill also: (1) removes the traditional requirement that property be cultivated or improved, and instead requires acts sufficient to put a reasonably diligent owner on notice; (2) provides that lawn mowing and *de minimus* non-structural encroachments would be deemed permissive; and (3) updates some archaic statutory language.

According to its legislative sponsors, this bill is intended to limit the use of adverse possession to good faith disputes over title to real property. Although the "reasonable basis" test in the bill could be viewed as focusing on an adverse possessor's state of mind in a manner similar to last year's bill, the sponsors' memoranda supporting this bill evince their intent to have courts focus on the evidentiary basis for competing title claims. Accordingly, I am approving this bill based upon this legislative intent and the other statutory improvements made by the bill.

The bill is approved.

(signed) DAVID A. PATERSON

APPROVAL MEMORANDUM - No. 16 Chapter 370

MEMORANDUM filed with Senate Bill Number 7816-A, entitled:

"AN ACT to amend the real property tax law, in relation to establishing a new residential property exemption in certain cities"

APPROVED

This bill would allow the City of Syracuse to offer real property tax exemptions as a catalyst for residential new construction and the rehabilitation of hazardous vacant residential structures, and would encourage "green" design and construction through enhanced exemptions. Real property tax exemptions, when properly targeted, can be an invaluable tool to spur economic development, and I applaud the Legislature for recognizing the importance of green building practices and for seeking mechanisms to induce these critical investments.

The State Constitution bars the enactment of tax exemptions by special laws. This bill, like dozens before it, circumvents this prohibition by authorizing tax exemptions for a "class" of cities that fall within a specified population window. In this case, the bill applies only to cities with a population of not less than

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130,000 nor more than 160,000 as of the 2000 decennial census – i.e., the City of Syracuse. However, because this population class is defined through reference to a specific decennial census, the class is fixed at one member and so could be deemed an unconstitutional special law. I urge the Legislature to correct this defect by adopting a general law authorizing municipalities throughout the state to offer these property tax exemptions.

The bill is approved.

(signed) DAVID A. PATERSON

APPROVAL MEMORANDUM - No. 30 Chapter 536

MEMORANDUM filed with Senate Bill Number 5357-A, entitled:

"AN ACT to amend the agriculture and markets law, in relation to including certain composting and mulching within the definitions of 'farm operation' for the purposes of agricultural districts"

APPROVED

This bill amends the Agriculture and Markets Law (AML) to, among other things, include certain defined composting and mulching activities on a farm within the definition of a "farm operation" for purposes of the agricultural districts law.

I am signing this bill but note that it contains a minor technical problem. Section 3 of the bill amends AML Section 301 to add a new subdivision 16 to provide a definition of "compost, mulch or other organic biomass crops." However, Chapter 341 of the Laws of 2008 previously added a new subdivision 16 to AML Section 301. Consequently, I encourage the Legislature to pass legislation to correct this problem.

The bill is approved.

(signed) DAVID A. PATERSON

APPROVAL MEMORANDUM - No. 44 Chapter 635

MEMORANDUM filed with Senate Bill Number 8442, entitled:

"AN ACT to amend the real property law tax law, in relation to a residential investment exemption in certain school districts"

APPROVED

This bill would allow the Rome City School District to offer real property tax exemptions as a catalyst for residential new construction. This new school tax exemption would build upon 2004 legislation authorizing the City of Rome to offer exemptions from municipal taxes, and similar exemptions have been authorized for the Cities of Jamestown (and its school district), Amsterdam (and its school district), Niagara Falls, Utica (and its school district), and Dunkirk (and its school district) since 2003.

The State Constitution bars the enactment of tax exemptions by special laws. This bill, like dozens before it, circumvents this prohibition by authorizing tax exemptions for a "class" of cities that fall within a specified population window. In this case, the bill applies only to school districts serving cities with a population of not less than 34,000 nor more than 35,000 as of the 2000 decennial census - i.e., the City of Rome. However, because this population class is defined through reference to a specific decennial census, the class is fixed at one member and so could be deemed an unconstitutional special law. I urge the Legislature to correct this defect by adopting a general law authorizing municipalities throughout the state to offer these property tax exemptions.

The bill is approved.

(signed) DAVID A. PATERSON

Veto Messages

DISAPPROVAL MESSAGES

- #9: Conservation Easement Tax Credit
- #20: Cold War Medals
- #28: FOIL; Subject Matter Lists
- #33: Roll Verifications by City Assessors
- #58: SAPA, Guidance Documents
- #61: Empire Zone Exemption; Non-Commercial Property
- #68: Harriman State Office Campus PILOTs
- #89: Access to Records, Upcoming Public Meetings
- #120: Volunteer Firefighter/Ambulance Worker Tax Credit
- #144: New York State Smart Growth Principles
- #145: Land Banks
- #149: New York City Reconveyance

VETO MESSAGE - No. 9

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

Senate Bill Number 4368-A, entitled: "AN ACT to amend the tax law, in relation to making technical corrections to the conservation easement tax credit"

NOT APPROVED

The 2006-07 Enacted Budget established a new conservation easement tax credit that allows a taxpayer to claim a credit, up to a maximum of \$5,000, for 25% of the school district, town and county real property taxes paid on land subject to a conservation easement held by a public or private conservation agency. However, this tax credit does not apply to other real property taxes, such as city, village or fire district taxes.

This bill would expand the tax credit to apply to all real property taxes paid on the land subject to a conservation easement, including city, village and fire district taxes. The bill would also clarify that the tax credit applies only to the land, or portion of the land, subject to the easement, and would allow a shareholder in an S-corporation to claim the credit on his or her personal income tax return.

Although I generally support efforts to encourage the creation of conservation easements as a means of preserving open space, the expansion of this tax credit would cause a reduction in future State revenues, at a time when we are facing looming budget deficits. As I have stated many times since taking office, the State needs to end its prior practice of simply passing numerous bills which affect future State budgets without considering the overall long-term consequences of such enactments. Indeed, tax credits and other similar proposals should only be considered as part of the State budget process, which involves a comprehensive review and analysis of all proposed future revenues and expenditures.

The bill is disapproved.

(signed) DAVID A. PATERSON

VETO MESSAGE - No. 20

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

Assembly Bill Number 5156-A, entitled: "AN ACT to amend the military law, in relation to the issuance of a Cold War medal"

NOT APPROVED

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This bill seeks to serve a noble purpose, honor the New York troops who served bravely and honorably in the armed forces of the United State during the long period of the Cold War. I commend the Legislature's desire to provide appropriate recognition for such service. Unfortunately, however, this bill, at this time, is not the appropriate means for doing so.

In the 1980s, there was a similarly well-motivated effort to convince the United States Congress to authorize a medal for veterans of the Cold War. However, the Department of Defense opposed that effort on a number of grounds. It cited "a long-standing policy that service or campaign awards will not cover periods where other service or campaign awards have been authorized, such as the Korean Service Medal, Armed Forces Expeditionary Medal and the Vietnam Service Medal, to name a few." It explained one basis for that policy as follows: "To bestow a generic medal or ribbon would lessen the significance and prestige of other decorations awarded during the same period." Another concern was the cost of the award. Ultimately, in 1998, Congress decided not to authorize the medal, and instead approved a Cold War recognition certificate. That certificate remains available today to those New York veterans whom this bill seeks to honor.

The fiscal concerns that helped convince the Congress not to authorize a federal Cold War medal are, today, even more pressing on our State, and the Division of Military and Naval Affairs (DMNA) and the Division of the Budget have recommended disapproval of this bill for that reason. DMNA estimates conservatively that if the medal were awarded to all of New York's eligible living Cold War veterans, it would cost approximately \$18 million. Since the bill would, appropriately, extend the same honor to deceased veterans, the actual cost could be even higher. DMNA, with an annual general fund budget of about \$20 million dollars, plainly could not absorb such large costs. I share fully the desire of the sponsors to recognize the sacrifices and bravery of those who served our country well during its long twilight struggle. I hope that we may work together in the years ahead to accomplish that goal through other means. With great regret, however, and mindful of the State's difficult fiscal times, I am continued to disapprove this bill.

The bill is disapproved.

(signed) DAVID A. PATERSON

VETO MESSAGE - No. 28

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

Assembly Bill Number 3403, entitled: "AN ACT to amend the public officers law, in relation to providing guidance to agencies on the development and maintenance of subject matter lists"

NOT APPROVED

The Public Officers law currently requires State agencies to maintain reasonably detailed and current subject matter lists of records maintained under the Freedom of Information Law (FOIL). However, a recent study by the Assembly Committee on Legislative Oversight, Analysis & Investigation found that such lists were mostly outdated. This bill seeks to address that finding. While this bill seeks to advance a laudable goal, it is not necessary.

This bill amends the Public Officers Law to: (1) require the Committee on Open Government (the "Committee") to provide guidance to agencies on the development of reasonably detailed subject matter lists of all records in the possession of State agencies; (2) authorize the Committee to publish model subject matter lists online and identify and develop best practices among agencies; and (3) require the Committee, in consultation with the State Archives and Records Administration (SARA), to develop agency guidance on the use of records retention schedules and records management activities.

The Committee, established in 1978, is responsible for overseeing the implementation of FOIL and the Open Meetings Law. Under existing law, the Committee may provide guidance on how to maintain detailed subject matter lists by posting samples on its website. SARA, established in 1971, is responsible

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for agency compliance with subject matter lists. Arts and Cultural Affairs Law section 57.05 gives SARA oversight responsibility regarding State and local agency records management practices as well as records retention and disposition schedules.

It is unnecessary to vest in the Committee powers and jurisdiction redundant of those of SARA. Doing so is also fiscally unsound, and the Division of the Budget recommends that I veto this bill. Thus, I am compelled to disapprove this bill. However, because I share the laudable goals of this bill's sponsors, I instruct the Committee and SARA to coordinate their efforts, using existing funding, to address the finding of the Assembly Committee on Legislative Oversight, Analysis & Investigation referenced above.

The bill is disapproved.

(signed) DAVID A. PATERSON

VETO MESSAGE - No. 33

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

Assembly Bill Number 10389, entitled: "AN ACT to amend the real property tax law, in relation to the verification of tentative and final assessment rolls by city assessors"

NOT APPROVED

This bill would require all "city assessors" to verify city assessment rolls. In most cities, this already occurs since each city has a single "assessor" who performs this function. In New York City, though, the Commissioner of Finance is charged, under the New York City Charter, with overseeing the assessment process and supervising 125 of the City's 141 assessors. In effect, this bill would require all of New York City's 141 assessors to personally appear and swear to the completeness of the entire New York City assessment roll, even though each assessor will have been responsible, at most, for only a portion of that roll. Further, if one or more assessors failed to appear and take the required oath, then the entire assessment roll would be unverified and vulnerable to legal challenge.

Assuring the accuracy of assessment rolls is of paramount concern to the property taxpayers of our State. However, this bill would impose an inordinate burden on New York City without any showing that doing so would improve the accuracy of the City's assessment process.

The bill is disapproved.

(signed) DAVID A. PATERSON

VETO MESSAGE - No. 58

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

Assembly Bill Number 8074, entitled: "AN ACT to amend the state administrative procedure act, in relation to guidance documents"

NOT APPROVED

I am constrained to veto this bill - the goal of which is to set standards regarding the categorization and issuance of agency guidance documents - because it contains several technical flaws.

First, this bill requires agencies to adopt regulations to be applied to every guidance document specifying the legal force and effect, precedential value and binding nature of each guidance document. However, State agencies do not have the power to determine the legal force and effect of their own guidance documents - only the judiciary can perform this function. I cannot sign a bill that requires agencies to overstep their constitutional roles.

Second, this bill requires agencies, when requested to issue a declaratory ruling, to either issue one or provide a written explanation as to why one was not issued. Currently, this is a discretionary decision and

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many agencies do not issue declaratory rulings at all. Requiring responses from agencies could require significant additional resources. This bill does not provide for any additional resources for this or any of its other mandates.

Finally, this bill requires copies of all guidance documents to be maintained at one central location where the public may inspect and copy them. However, State Administrative Procedure Act Section 202-e already requires agencies to post all guidance documents on their websites. Further, Article 6 of the Public Officers Law (also known as the Freedom of Information Law) already requires agencies to make records, such as guidance documents, available upon request. In this difficult fiscal environment there is no need to create a duplicative repository of agency documents which might be less geographically accessible to the public than the current ways of accessing guidance documents.

The bill is disapproved.

(signed) DAVID A. PATERSON

VETO MESSAGE - No. 61

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

Assembly Bill Number 9500-A, entitled: "AN ACT to amend the real property tax law, in relation to an empire zone enterprise and the empire zone tax exemption"

NOT APPROVED

This bill seeks to remove residential real property from the Empire Zone local real property tax exemption found in Real Property Tax Law Section 485-e by restricting the tax exemption to real property that is improved for commercial, business or industrial activity. This change would apply to new projects, as well as projects currently being planned or under construction.

I am constrained to veto this bill because it unfairly eliminates an important piece of financing, and would impact residential projects currently under development. If this tax exception is eliminated, the tax savings that developers have assumed in their financial models could be passed on to buyers or force the projects to default.

My administration is working with elected officials and communities across the State to address New York's shortage of affordable housing and to revitalize downtown areas. This bill would impede those efforts, by jeopardizing housing projects that are underway throughout the State. In addition, the State of New York's mortgage agency, Mortgage Insurance Fund (MIF), insures several affordable housing projects that will be impacted by the loss of this real property tax exemption and I would neither want to jeopardize those projects nor increase potential claims against the MIF.

The bill is disapproved.

(signed) DAVID A. PATERSON

VETO MESSAGE - No. 68

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

Senate Bill Number 4255-D, entitled: "AN ACT to amend the public lands law, in relation to certain state leased or state-owned lands"

NOT APPROVED

The City of Albany, like the State, is experiencing major fiscal challenges. In addition, as the capital of New York, the City houses quite a few properties on which it is unable to collect taxes because Real Property Tax Law Section 404 exempts State-owned land from local taxation.

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This bill would require the State to make payments in lieu of taxes (PILOTs) to the City of Albany for the W. Averell Harriman State Office Building Campus (Harriman Campus) for thirty years. For the year 2008, the PILOT would be \$5,500,000 and thereafter the annual PILOT would be \$11,000,000. Over the next thirty years, the State would pay \$324,500,000 in PILOTs for the Harriman Campus. The PILOTs sought to be provided under this bill would be used to alleviate some of Albany's financial burdens including providing municipal services to the Harriman Campus.

I am keenly aware of Albany's fiscal situation. However, in this current economic environment, I am simply unable to approve this bill.

The Harriman Campus is a large business complex which brings thousands of people to the City of Albany every weekday, and many State employees choose to make the City of Albany their home because of its proximity to their work, which increases the City of Albany's tax rolls. The state is currently working with the City of Albany to attract private business to the Harriman Campus and create a Research and Technology Park there. In addition, we will continue to work with the City to ascertain its costs in providing services to the Harriman Campus.

The bill is disapproved.

(signed) DAVID A. PATERSON

VETO MESSAGE - No. 89

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

Assembly Bill Number 5943, entitled: "AN ACT to amend the public officers law, in relation to requiring certain records which are the subject to a discussion conducted at an open meeting be made available to the public"

NOT APPROVED

This legislation would amend the New York State Open Meetings Law (OML) to require that, when a board or commission is scheduled to hold a meeting that will be open to the public and at which it will discuss a record that is subject to the Freedom of Information Law ("FOIL"), such record must be made public, upon request, at least 72 hours or as soon as practicable prior to the meeting.

I applaud the sponsors' efforts and encourage all agencies and local governments to make documents available for meetings as soon as they are able. While the bills mandate is burdensome, government at every level should endeavor to improve transparency by making these documents available as soon as is practicable.

FOIL incorporates a comprehensive system for receiving and responding to requests for access to records, including a five-day time period for acknowledging receipt of a request, reaching a final determination of a request and making non-exempt records available in response to a request. These time periods are essential for agencies to manage their workload and to process FOIL requests in an orderly manner which does not disrupt their operations.

This bill would effectively do away with the current system for records which a board or commission intends to discuss at a meeting open to the public. Under the requirements of this bill, if such a record were requested a week or less before the meeting at which it was scheduled to be discussed, it would be necessary for the board or commission to determine immediately whether the record is to be disclosed under FOIL and, if the record should be disclosed, to take immediate steps to have the record copied and made available. In the case of voluminous records, both the review and the copying of the material within the required period would impose a serious burden on agency staff. Such requirements, dispensing entirely with the procedure for making and responding to FOIL requests, could seriously disrupt the work of boards and commissions in the days immediately preceding an important scheduled meeting.

The bill is disapproved.

(signed) DAVID A. PATERSON

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VETO MESSAGE - No. 120

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

Senate Bill Number 6869, entitled: "AN ACT to amend the tax law, in relation to the volunteer firefighters' and ambulance workers' credit, and to repeal paragraph 2 of subsection (e-1) of section 606 of the tax law relating thereto"

NOT APPROVED

This bill would allow volunteer firefighters and ambulance workers to receive both a real property tax exemption and a personal income tax credit. While these brave men and women perform an invaluable service to their communities, I am constrained to veto this bill because of the additional burden it places on the State and our local governments in this time of fiscal austerity.

Firefighters and ambulance workers who selflessly give their personal time and often sacrifice their own well being to protect our lives and personal property admirably do so without the expectation of remuneration.

This session I have signed into law two bills which recognize their invaluable public service. One allows volunteer firefighters and ambulance workers to apply for health insurance coverage under the same plans offered to public employees in the district or department for which they volunteer. The other gives volunteer ambulance workers the same ability as volunteer firefighters to earn service award credits for deferred compensation if they become disabled as a result of their service.

Unfortunately, the State currently faces dire fiscal straits. To prepare the State for an impending loss of revenue, I ordered all agencies to cut spending and I have worked with the Legislature to enact a two year State savings plan. Currently, these volunteers may choose between the exemption or the credit. In this financial environment, I cannot create this new benefit which will give them both while impacting State funds. In the future, bills such as this which require State expenditures should be negotiated during the budgeting process when all the financial demands of the State are evaluated simultaneously.

The bill is disapproved.

(signed) DAVID A. PATERSON

VETO MESSAGE - No. 144

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

Assembly Bill Number 7335-A, entitled: "AN ACT to amend the environmental conservation law, in relation to establishing the New York state smart growth principles"

NOT APPROVED

This bill directs various agencies, authorities and other State entities ("State agencies") to: (1) implement "smart growth principles" in the policies and programs they administer; (2) refocus state training and technical assistance programs for local officials to incorporate smart growth principles and enhance local government capacity to adopt such principles in planning; (3) encourage community transportation planning based on smart growth principles; and (4) give due consideration to applications that are consistent with smart growth principles in all grant, award, loan and assistance programs. The bill's "smart growth principles" consist of eight broad concepts – public investment, economic development, conservation and restoration, partnerships, community livability, transportation, consistency, and sustainability – which are defined in the bill.

I commend the sponsors of this bill for supporting legislation that is intended to, among other things, preserve the State's scarce natural resources, mitigate the environmental and societal impacts of

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development, and minimize sprawl – which are all goals that I share. However, this bill cannot be implemented and the bill is unnecessary to accomplish the sponsors' stated objectives.

The bill's smart growth definitions are extremely amorphous and in some instances are little more than aspirations. For example, the bill requires State agencies to: (1) "account for and minimize the direct and indirect public costs of new development" (the bill's "public investment" principle); (2) "establish intermunicipal and other intergovernmental partnerships" (the "partnerships" principle); (3) "provide transportation choices ... to improve health and quality of life" (the "transportation" principle); (4) "ensure predictability in building and land use codes" (the "consistency" principle); and (5) "encourag(e) communities to adopt ... redevelopment strategies which build on (a) community's vision for its future" (the "community livability" principle). While these are certainly worthwhile goals, they do not provide the type of clear and objective standards that are necessary to guide implementation, prescribe agency discretion, and allow for a fair and effective assessment of compliance.

Moreover, this bill is unnecessary. I recently continued an Executive Order that created a "Smart Growth Cabinet." The Cabinet will: (1) identify barriers and opportunities to the incorporation of "smart growth" principles in State policies and decision-making, including state programs that provide technical and other assistance to local governments; (2) consider how to align state grants and capital programs to foster "smart growth" development in appropriate regions of the State; and (3) make recommendations to the Governor on effective ways to promote smart growth initiatives.

The use of the Cabinet, in contrast to the bill's broad mandate, will allow a more deliberate consideration of what specific smart growth principles are most appropriately applied to a particular agency, program or policy; will result in recommendations for necessary changes to legislation and regulations to ensure that appropriate principles are properly and lawfully adopted; and will ensure that the incorporation of these principles does not conflict with other important State initiatives and priorities.

The bill is disapproved.

(signed) DAVID A. PATERSON

VETO MESSAGE - No. 145

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

Assembly Bill Number 8059-C, entitled: "AN ACT to amend the county law and the New York state urban development corporation act, in relation to creating land banks for the acquisition, management, planning and reuse of vacant and abandoned property"

NOT APPROVED

This bill authorizes the Urban Development Corporation (which operates as the Empire State Development Corporation or ESD), upon the request of county legislatures, to create up to three land banks to acquire, manage, plan and reuse abandoned property. I applaud Assemblyman Sam Hoyt for introducing this bill which would benefit communities with a significant number of vacant properties; however, I am constrained to veto this bill.

I am aware that land banks have been used successfully in other States with success and I am not opposed to them in concept. However, this bill does not include necessary provisions that have enabled cities and counties in other States to use land banks to their advantage. Foremost, this bill provides no appropriation or mechanism to fund the creation and operations of the land banks. Unfortunately, given the fiscal condition of the State, I cannot approve this program which should be negotiated during the budgeting process when all of the state's financial demands can be evaluated simultaneously.

Second, this bill does not authorize cities, villages and towns, where vacant properties are often found, to appoint members to the boards of the land banks. Cities, villages and towns should be able to appoint representatives to the boards of land banks because they have spot condemnation, zoning, assessing, and inspection and enforcement powers, as well as resources and local contacts in community planning

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and local economic development. Furthermore, these local governments provide municipal services, including police and fire protection, to these vacant properties, thus making their board representation crucial.

Third, the land banks should not be structured as subsidiaries of ESD. This bill does not require the counties to manage the properties, although the land bank would be created for their benefit. Therefore, counties would have little incentive to mitigate ESD's liability, since the land banks would be subsidiaries of ESD. Finally, other states' land bank legislation usually reforms State tax foreclosure procedures by shortening the time period for foreclosure, increasing the notice given to owners and other interested parties and facilitating acquisition of properties by local governments when taxes due exceed a property's value.

Land banking is the type of economic development tool New York communities should have at their disposal; unfortunately, this bill contains some technical faults.

The bill is disapproved.

(signed) DAVID A. PATERSON

VETO MESSAGE - No. 149

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

Assembly Bill Number 10772, entitled: "AN ACT authorizing the city of New York to reconvey its interest in certain real property acquired by in rem tax foreclosure in the borough of Manhattan to North Edgecombe, LLC, notwithstanding expiration of the two year period within which application may be made to the city to release its interest in property thus acquired; Block No. 2048, Lot No. 35 on the tax map for the borough of Manhattan"

NOT APPROVED

Like other property reconveyances bills that are routinely passed and approved each year, this bill purports to authorize New York City ("the City") to reconvey to its former owner property that the City acquired in an in rem tax foreclosure action. If this were a typical property reconveyance bill, I would approve it, as I did an earlier bill (Chapter 476 of the Laws of 2008).

This is not, however, a typical property reconveyance bill. First, there are questions about the ownership history of the property that is the subject of this bill. According to the City's records, RGS Associates (RGS), misidentified in the bill as R6S Associates, owned this property until the City acquired it in 1992 in an in rem tax foreclosure action. The City's records further show that even after the City obtained title to the property, RGS purported to transfer the property to another party. The City is of the opinion that that transaction was invalid, as were two subsequent transactions, the last of which purported to transfer the property to North Edgecombe, LLC. Thus, while the bill states that it is enabling the City to "reconvey" the property to its "former owner," it then authorizes "reconveyance" to North Edgecombe, LLC, which was not the owner that lost the property in the foreclosure action.

Second, I have been advised that there is currently litigation pending between the City and North Edgecombe, LLC, which directly addresses the ownership of this property. The City filed a quiet title action in January 2008, and this bill seems to be an attempt to circumvent the litigation that will clarify the ownership history of the property. Significantly, even if approved, this bill is unlikely to clarify the ownership of this property. By its terms, the bill would require North Edgecombe, LLC, as a condition precedent to a release and reconveyance of the property, to submit to the City a "certified title search" and "affidavit of ownership." In view of the City's litigation position that the deed that purports to transfer title of the property to North Edgecombe, LLC is a false instrument, and that there is a cloud on the title to this property, it is unlikely that the City would approve any reconveyance of this property to North Edgecombe, LLC until the ownership issues are clarified in the pending litigation.

The bill is disapproved.

(signed) DAVID A. PATERSON

C. LEGISLATIVE STATUS CHART

2008 RPT Related Bills of Interest -- Passed Both Houses -- Status as of 11/19/08 (Count = 68)

	<u>Subject of Legislation</u>	<u>Bill Numbers</u>	<u>Prime Sponsor</u>	<u>Last Act of Legislature</u>	<u>Action of Governor</u>
<u>RPS Departmental / Governor's Program / Budget Bills:</u>					
1	Budget Bill -- Includes various STaR exemption, and MC STAR rebate program amds. (see Parts Q,R,S,W)	S.6807-c A.9807-c	Budget Bill Budget Bill	Passed Senate 4/9 Passed Assembly 4/9	Signed 4/23 Ch. 57
2	Gov's Prog. Bill #74 -- Brownfields Redevelopment related tax credit provisions	S.8717 A.11768	Marcellino Rules (Sweeney)	Passed Senate 6/24 Passed Assembly 6/24	Signed 7/21 Ch. 390
3	ORPS Dept. Bill #57 -- Residential Assessment Ratio (RAR) to be based on ORPS market value survey findings	S.4963-a A.7700-a	Little Galef	Passed Senate 3/3 Passed Assembly 5/5	Signed 5/21 Ch. 78
4	ORPS Dept. Bill #289 -- Tax Exemption reporting, requires exemption impact reporting when local budgets are adopted	S.7538 A.10613	Little Galef	Passed Senate 6/3 Passed Assembly 6/23	Signed 7/7 Ch. 258
<u>Other RPT Related Bills:</u>					
5	Ag. Assessment -- Includes Composting, Mulch, and other Biomass crop ops. as land used in ag. production	S.5357-a A.9968-a	Larkin DelMonte	Passed Senate 6/17 Passed Assembly 6/17	Signed 9/4 Ch. 536 Approval Memo. #30
6	Ag. Assessment -- Includes lands used by certain non-profit agricultural research facilities (amds. AML Sec. 301(4))	S.6922-a A.10574-a	Little Magee	Passed Senate 5/29 Passed Assembly 6/19	Signed 9/25 Ch. 611
7	Ag. Assessment -- Makes independent Apiaries eligible (Ag. & Mkts. Departmental #157)	S.7905-a A.10687-a	Young Stirpe	Passed Senate 6/17 Passed Assembly 6/17	Signed 7/21 Ch. 341
8	Assessment Inventory -- Ensures Public access to property inventory information (relates to Comps case & Op. #10-4)	S.8328-a A.11150-a	Winner Paulin	Passed Senate 6/19 Passed Assembly 6/23	Signed 8/5 Ch. 479
9	Empire Zones -- Requires that property be used for commercial, business, or industrial activity (amds. 485-e)	S.8628 A.9500-a	Robach Schroeder	Passed Senate 6/24 Passed Assembly 6/18	Vetoed 8/5 Veto Message #61
10	Erie Co. Provisions -- Changes Town Assessment calendar to conform to the default RPTL dates (Amds. Co. Tax Act)	S.7026 A.10167	Volker Schimminger	Passed Senate 6/5 Passed Assembly 5/27	Signed 8/5 Ch. 413
11	Exemption -- Ag. Bldgs., Extends the provisions for 10 more years (through 1/1/2019) (Amds. RPTL 483)	S.6916 A.9863	Larkin Magee	Passed Senate 6/5 Passed Assembly 6/23	Signed 9/4 Ch. 544
12	Exemption -- C. of Rome School District, Residential Investment, w/ 10 year phase-out (adds RPTL 485-m)	S.8442 A.11145	Rules Destito	Passed Senate 6/17 Passed Assembly 6/17	Signed 9/25 Ch. 635 Approval Memo. #44
13	Exemption -- C. of Syracuse, New Residential Property w/ LEED or certain total rehabs. (adds RPTL 485-m)	S.7816-a A.10835-a	DeFrancisco Christensen	Passed Senate 6/19 Passed Assembly 6/19	Signed 7/21 Ch. 370 Approval Memo. #16
14	Exemption -- Forest lands, Amds. RPTL 480-a to allow certain forest certification programs in lieu of mgt. plan	S.1120 A.872	Little Destito	Passed Senate 6/12 Passed Assembly 6/12	Signed 8/5 Ch. 396
15	Exemption -- 3 Properties, RPTL Sec. 406 (Village of Amityville, T. of Babylon)	S.6786 A.9721	Fuschillo Sweeney	Passed Senate 6/5 Passed Assembly 6/12	Signed 9/4 Ch. 542

Legislative Status Chart

2008 RPT Related Bills of Interest -- Passed Both Houses -- Status as of 11/19/08 (Count = 68)

	<u>Subject of Legislation</u>	<u>Bill Numbers</u>	<u>Prime Sponsor</u>	<u>Last Act of Legislature</u>	<u>Action of Governor</u>
16	Exemption -- 1 Property, RPTL Sec. 410 (Moleston Fire District, T. of Ramapo)	S.7338-a A.9851-b	Morahan Jaffee	Passed Senate 6/16 Passed Assembly 6/17	Signed 9/25 Ch. 621
17	Exemption -- 1 Property, RPTL Sec. 420-a (Adelante of Suffolk Co., Inc., T. of Islip)	S.7715 A.10911	Trunzo Ramos	Passed Senate 6/11 Passed Assembly 6/23	Signed 9/25 Ch. 626
18	Exemption -- 1 Property, RPTL Sec. 420-a (Calvary Orthodox Presbyterian Church, C. of Schenectady)	S.8588 A.11667	Farley Rules (Tedisco)	Passed Senate 6/23 Passed Assembly 6/24	Signed 9/4 Ch. 558
19	Exemption -- 1 Property, RPTL Sec. 420-a (Camp Venture, Inc., T. of Ramapo)	S.7307 A.9852	Morahan Jaffee	Passed Senate 6/11 Passed Assembly 6/17	Signed 8/5 Ch. 457
20	Exemption -- 6 Properties, RPTL Sec. 420-a (Carver Community Center, Inc., C. of Schenectady)	S.8587 A.11668	Farley Rules (Tedisco)	Passed Senate 6/23 Passed Assembly 6/24	Signed 9/4 Ch. 557
21	Exemption -- 4 Properties, RPTL Sec. 420-a (Faith Deliverance Tabernacle, C. of Schenectady)	S.8586 A.11666	Farley Rules (Tedisco)	Passed Senate 6/23 Passed Assembly 6/24	Signed 9/4 Ch. 556
22	Exemption -- 1 Property, RPTL Sec. 420-a (Hands Across Long Island, Inc., T. of Islip)	S.7220 A.10912	Trunzo Ramos	Passed Senate 6/11 Passed Assembly 6/23	Signed 9/25 Ch. 620
23	Exemption -- 1 Property, RPTL Sec. 420-a (Khal Zichron Mordechai, C. of New York)	S.7128-a A.10089-a	Kruger Weinstein	Passed Senate 6/16 Passed Assembly 6/12	Signed 9/25 Ch. 581
24	Exemption -- 1 Property, RPTL Sec. 420-a (Mosdas Torah, Inc., T. of Ramapo)	S.1474 A.9306	Morahan Jaffee	Passed Senate 6/11 Passed Assembly 5/5	Signed 6/30 Ch. 142 Approval Memo. #11
25	Exemption -- 9 Properties, RPTL Sec. 420-a (Mount Olivet Missionary Baptist Church, Inc., Schenectady)	S.8590 A.11670	Farley Rules (Tedisco)	Passed Senate 6/23 Passed Assembly 6/24	Signed 9/4 Ch. 560
26	Exemption -- 1 Property, RPTL Sec. 420-a (New York Gospel Assembly, Inc., T. of Babylon)	S.6465-a A.9405-a	Johnson, O Raia	Passed Senate 6/11 Passed Assembly 6/12	Signed 9/25 Ch. 608
27	Exemption -- 1 Property, RPTL Sec. 420-a (Northeastern Conf. Corp of 7th Day Adventists, Ramapo)	S.1475 A.9092	Morahan Jaffee	Passed Senate 6/10 Passed Assembly 5/19	Signed 8/5 Ch. 409
28	Exemption -- 1 Property, RPTL Sec. 420-a (Redeemed Christian Church of God, Intl. Chapel..., Babylon)	S.6785-a A.9722-a	Fuschillo Sweeney	Passed Senate 6/12 Passed Assembly 6/17	Signed 9/25 Ch. 610
29	Exemption -- 2 Properties, RPTL Sec. 420-a (Suffolk Jewish Center, T. of Babylon)	S.7481 A.10520	Johnson, O. Raia	Passed Senate 6/11 Passed Assembly 6/17	Signed 9/25 Ch. 624
30	Exemption -- 1 Property, RPTL Sec. 420-a (Sullivan Free Library, V. of Chittenango, T. of Sullivan)	S.8236 A.10771	Valesky Magee	Passed Senate 6/17 Passed Assembly 6/12	Signed 8/5 Ch. 417
31	Exemption -- 6 Properties, RPTL Sec. 420-b (Ancient Order of Hibernians, C. of Schenectady)	S.8589 A.11669	Farley Rules (Tedisco)	Passed Senate 6/23 Passed Assembly 6/24	Signed 9/4 Ch. 559
32	Exemption -- 1 Property, RPTL Sec. 420-b (Home Furnishings Program, Inc., C. of Schenectady)	S.8592 A.11246	Farley Tedisco	Passed Senate 6/23 Passed Assembly 6/24	Signed 8/5 Ch. 488

Legislative Status Chart

2008 RPT Related Bills of Interest -- Passed Both Houses -- Status as of 11/19/08 (Count = 68)

<u>Subject of Legislation</u>	<u>Bill Numbers</u>	<u>Prime Sponsor</u>	<u>Last Act of Legislature</u>	<u>Action of Governor</u>
33 Exemption -- SCRIE, extends to Head of Household who occupies >2 dwelling units and has paid rent for >2 yrs.	S.4221-b A.2604-b	Smith Englebright	Passed Senate 6/23 Passed Assembly 6/23	Signed 9/4 Ch. 531
34 Exemption -- Vets., Alternative, Expands def. of veteran, covers some members of Reserve components of armed forces	S.8455 A.11493	Fuschillo Rules (Walker)	Passed Senate 6/17 Passed Assembly 6/24	Signed 7/21 Ch. 384
35 Exemption -- Vets., Alternative, Unremarried Surviving Spouses, Allows Transfers w/in Muni.	S.8566 A.4262-a	Leibell Gianaris	Passed Senate 6/19 Passed Assembly 6/12	Signed 9/4 Ch. 503
36 Exemption -- Vets., Cold War Veterans, Amds. Ch. 655 of '07 makes technical amends. (RPTL Sec. 458-b)	S.6509 A.9426	Leibell Paulin	Passed Senate 1/15 Passed Assembly 1/15	Signed 1/28 Ch. 6
37 Authorizes issuance of a "Cold War Service Medal" by the Governor of NY to certain vets. (amds. Mil. Law)	S.5650 A.5156-a	Leibell Ortiz	Passed Senate 6/19 Passed Assembly 3/4	Vetoed 7/7 Veto Message #20
38 Volunteer Tax Credit -- Allows Vol. Fire/Ambulance Members to get both the PIT credit & RPT exemption	S.6869 A.9864	Griffo Magee	Passed Senate 5/5 Passed Assembly 6/23	Vetoed 9/4
39 Nassau Co. Provisions -- Cold War Vets., Legalizes adoption of local law after the 2008 roll deadline	S.8382-a A.11050-a	Skelos Lavine	Passed Senate 6/17 Passed Assembly 6/17	Signed 8/20 Ch. 495
40 Nassau Co. Provisions -- Limits Adjustment of Current Base Proportions to 1 percent	S.7115 A.10284	Skelos Weisenberg	Passed Senate 4/1 Passed Assembly 5/5	Signed 5/21 Ch. 84
41 Nassau Co. Provisions -- Long Beach, Glen Cove, and Lk. Success, Limits adjustment of Art. 19 shares	S.7116 A.10283	Skelos Weisenberg	Passed Senate 4/1 Passed Assembly 5/19	Signed 6/30 Ch. 123
42 New York City Provisions -- Assessment roll verification required by City Assessors (Amds. RPTL Secs. 505 & 514)	S.7294 A.10389	Padavan Brennan	Passed Senate 6/17 Passed Assembly 5/27	Vetoed 7/21 Veto Message #33
43 New York City Provisions--Brooklyn, certain property exempt if leased to the Unified Court System (amds. RPTL 420-a)	S.7152-a A.10273-a	Golden Lopez, V.	Passed Senate 6/24 Passed Assembly 6/17	Signed 9/4 Ch. 512
44 New York City Provisions--Certain private dwellings, extends RPTL 421-b project commencement timeframe until 7/1/09	S.8548 A.11621	Lanza Rules(Lopez, V.)	Passed Senate 6/24 Passed Assembly 6/23	Signed 7/21 Ch. 347
45 New York City Provisions -- Extends Class II Abatement Program for 4 more years (Amds. RPTL 467-a)	S7714 A.10688	Padavan Silver	Passed Senate 5/12 Passed Assembly 5/19	Signed 6/10 Ch. 109
46 New York City Provisions -- Industrial & Commercial Work Tax Abatement, replaces ICIP (RPTL 489aaaaaa et seq.)	S.6366-a A.11586	Padavan Rules (Silver)	Passed Senate 6/19 Passed Assembly 6/24	Signed 6/30 Ch. 119
47 New York City Provisions -- Industrial & Commercial Work Tax Abatement, replaces ICIP (makes misc. program amds.)	S.8705 A.11755	Padavan Rules (Silver)	Passed Senate 6/23 Passed Assembly 6/24	Signed 6/30 Ch. 138
48 New York City Provisions -- "Green Roof" Tax Abatement, Amds. RPTL 467-a and adds Secs. 499-aaa through 499-ggg	S.7553 A.11226	Lanza Diaz, R.	Passed Senate 6/11 Passed Assembly 6/23	Signed 8/5 Ch. 461
49 New York City Provisions -- Limits the change in adjusted base proportions to 0% for fiscal year '08	S.8426 A.11510	Padavan Rules (Farrell)	Passed Senate 6/17 Passed Assembly 6/23	Signed 6/29 Ch. 118

Legislative Status Chart

2008 RPT Related Bills of Interest -- Passed Both Houses -- Status as of 11/19/08 (Count = 68)

<u>Subject of Legislation</u>	<u>Bill Numbers</u>	<u>Prime Sponsor</u>	<u>Last Act of Legislature</u>	<u>Action of Governor</u>
50 New York City Provisions -- Manhattan, certain Vacant land adjacent to residential land to be moved to Tax Class IV	S.6207-b A.8666-a	Serrano Farrell	Passed Senate 6/19 Passed Assembly 5/19	Signed 7/21 Ch. 332
51 New York City Provisions -- Manhattan, certain Multiple Dwellings (amds RPTL 489, aka J-51 prog.)	S.8427-a A.11480	Padavan Rules (Gottfried)	Passed Senate 6/19 Passed Assembly 6/19	Signed 7/21 Ch. 383
52 New York City provisions -- Multiple Dwellings, further amendments (amds. RPTL 421-a, Chs. 618 & 619 '07)	S.6446-a A.9373-a	Golden Lopez V.	Passed Senate 1/15 Passed Assembly 1/15	Signed 2/19 Ch. 15
53 New York City Provisions -- Solar Electrical Tax Abatement, Amds. RPTL 467-a and adds 499-aaaa through 499-gggg	S.8145 A.11202	Padavan Farrell	Passed Senate 6/12 Passed Assembly 6/17	Signed 8/5 Ch. 473
54 Oneida Indian Nation RPT Depository Fund extender, Ch. 521 of 2005 provisions extended to June 30, 2010	S.7518 A.10563	Griffo Destito	Passed Senate 6/16 Passed Assembly 5/12	Signed 6/30 Ch. 146
55 Real Estate Transfer Tax -- Suffolk, Peconic Bay Region, exempts 1st time homebuyers < SONYMA limits	S.1842-c A.3474-c	LaValle Thiele	Passed Senate 6/12 Passed Assembly 6/17	Signed 7/21 Ch. 349
56 Real Estate Transfer Tax -- Suffolk, Peconic Bay Region, adds fiscal oversight and financial control measures	S.8111-a A.10274-a	LaValle Thiele	Passed Senate 6/16 Passed Assembly 6/24	Signed 7/21 Ch. 373
57 Real Estate Transfer Tax -- Westchester & Putnam Cos., Amds. Ch.596 '07, ORPS median computation & filing reqs.	S.6513 A.9443	Leibell Bradley	Passed Senate 1/29 Passed Assembly 1/15	Signed 2/19 Ch. 17
58 Real Estate Transfer Tax -- T. of Northeast, authorizes establishment of community preservation fund	S.5657-a A.8831-a	Leibell Molinaro	Passed Senate 6/24 Passed Assembly 6/17	Signed 7/21 Ch. 333
59 Sale of Deed Copies -- Requires vendors to disclose the fact that copies are available from County Clerks (Gen. Bus. Law)	S.8517 A.11544	Saland Rules (Pheffer)	Passed Senate 6/18 Passed Assembly 6/19	Signed 8/5 Ch. 485
60 Suffolk Co. Provisions -- Limits adjustment of current base proportions under Art. 19 (Islip) to 1 percent	S.7219 A.10318	Trunzo Fields	Passed Senate 6/3 Passed Assembly 5/27	Signed 6/30 Ch. 145
61 Tax Appeals -- authorizes multi-jurisdiction assessors to designate an employee to serve on their behalf at BAR	S.4571 A.7969	Young Parment	Passed Senate 5/28 Passed Assembly 6/4	Signed 9/25 Ch. 606
62 Tax Certiorari -- Extends authorization for financing of certain RPT refunds for 5 years (to 6/15/2013)	S.6969 A.10733	Little Hoyt	Passed Senate 3/31 Passed Assembly 6/17	Signed 6/30 Ch. 122
63 Tax Enforcement -- C. of Amsterdam, Extends the authorization for bulk sale of liens by 2 years	S.7282-c A.10454-c	Farley Amedore	Passed Senate 6/23 Passed Assembly 6/23	Signed 8/5 Ch. 455
64 Tax State Property -- C. of Albany, Provides PILOTs for W. Averell Harriman State Office Bldg. Campus	S.4255-d A.7058-d	Breslin McEneny	Passed Senate 6/23 Passed Assembly 6/24	Vetoed 8/5 Veto Message #68
65 Tax State Property -- Thoroughbred Racing Facilities, Nassau, Queens, and Saratoga Counties (adds 532(j))	S.6950 A.9998	Bruno Pretlow	Passed Senate 2/13 Passed Assembly 2/13	Signed 2/19 Ch. 18
66 Tax State Property -- Thoroughbred Racing Facilities, subject to Special Assessments (amds. Ch. 18 of '08, and RPTL 530)	S.8709 A.11502-a	Bruno Rules (Pretlow)	Passed Senate 6/23 Passed Assembly 6/24	Signed 6/30 Ch. 140

Legislative Status Chart

2008 RPT Related Bills of Interest -- Passed Both Houses -- Status as of 11/19/08 (Count = 68)

	<u>Subject of Legislation</u>	<u>Bill Numbers</u>	<u>Prime Sponsor</u>	<u>Last Act of Legislature</u>	<u>Action of Governor</u>
67	T. of Hempstead -- Extends PILOTs from the Town to the school and fire district for certain Lido Beach land to 6/30/13	S.7254 A.10282	Skelos Weisenberg	Passed Senate 6/5 Passed Assembly 6/12	Signed 6/30 Ch. 124
68	V. of South Blooming Grove -- Authorizes adoption of a fiscal year starting Jan. 1, and combines two water districts	S.8454 A.11536	Larkin Rules (Calhoun)	Passed Senate 6/23 Passed Assembly 6/24	Signed 8/5 Ch. 482
1	FOIL -- State agency subject matter list related provisions, requires lists to be updated at least annually (Sec. 87)	S.7944 A.1975	Flanagan Diaz, R.	Passed Senate 6/12 Passed Assembly 2/25	Signed 9/4 Ch. 499
2	FOIL -- Requires the Committee on Open Gov't. to provide guidance to agencies relating to subject matter lists (Sec. 89)	S.7943 A.3403	Flanagan Diaz, R.	Passed Senate 6/16 Passed Assembly 3/17	Vetoed 7/21 Veto Message #28
3	FOIL -- Requires that, whenever practicable, an agency make information available to the public electronically (Sec. 89)	S.3850 A.582	Flanagan Paulin	Passed Senate 6/3 Passed Assembly 6/4	Signed 7/21 Ch. 351
4	FOIL -- Provides for request of copies of public records in a form other than paper w/ payment of cost of reproduction	S.962-c A.809-c	Skelos Destito	Passed Senate 6/17 Passed Assembly 6/23	Signed 7/7 Ch. 223
5	FOIL -- Requires certain records discussed at open meetings to be publicly available prior to such meeting for a fee	S.7042 A.5943	DeFrancisco Markey	Passed Senate 6/3 Passed Assembly 5/19	Vetoed 9/4 Veto Message #89
6	Open Meetings Law -- Provides that a Court may award costs and reasonable attorney's fees in the case of violations	S.1599-a A.1033-a	Saland Paulin	Passed Senate 6/4 Re-Passed Assembly 6/2	Signed 8/5 Ch. 397

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