

This is my written testimony for the local government portion of the 2023 joint legislative budget hearings. I am providing testimony to address proposed modifications to the State Administrative Procedures Act and section 575-b of Real Property Tax Law, as included in the Governor's budget request entitled "Part N" on Page 70 of Document 12574-01-3 as retrieved from the Division of the Budget's website at

<https://www.budget.ny.gov/pubs/archive/fy24/ex/artvii/revenue-bill.pdf> .

This proposal will adversely impact the revenue, administration, and budgets of local government entities. **I strongly urge the Senate & Assembly committees to reject this proposed legislation in whole.**

Part N seeks to eliminate public input into appraisal modeling of large-scale wind and solar electric-generating facilities and to eliminate State Administrative Procedure Act ("SAPA") proceedings to seek redress when the Office of Real Property Tax Services ("ORPTS") fails to address community concerns.

Rural upstate communities are the ones most heavily impacted by large-scale industrial solar electric-generating facilities. These facilities currently target tens of thousands of acres of forest and farmland. The planned build-out of such facilities is expected to encompass tens of thousands of additional acres, making it a high impact issue for local government. Most upstate communities see large-scale industrial solar or wind electric generating facilities as unwanted assaults on their communities, disrupting the character, cohesion, and economic viability of their citizenry.

Section 1 of Part N seeks to exempt the energy system appraisal model that the Legislature requested of the Office of Real Property Tax Services ("ORPTS") from Article 2 of the State Administrative Procedure Act ("SAPA"). Such a change would preclude any public input into the formation of the model – a circumstance that the Legislature purposely and rightfully included when they enacted Section 575-b of the RPTL in 2021.

The Legislature wisely chose to require ORPTS to consult the public and the entities specifically listed in Section 575-b to offer comment and advice on the proposed appraisal model. Section 1 of this act directly subverts the Legislature's direction.

In Section 2 of Part N, the proposed legislation seeks to add "appraisal models" and "discount rates" to a list of items already exempted from SAPA. The proposed legislation ignores the fact that these items are highly dissimilar from the other items listed, namely "state equalization rates, class ratios, special

equalization rates, and special equalization ratios.” The Senate and Assembly recognized that models and discount rates were not valid candidates for exemption from SAPA and made no provision to exempt them. Section 2 controverts that.

Section 3 provides ORPTS the option to adopt its 2022 appraisal model and discount rates for use in 2023 without any additional consultation or public comment. This echoes the apparent intent of the other sections to stifle public input into the determination of the appraisal model and discount rates and attempts to entrench the disputed model into the year-to-year work of the local assessing units.

In Section 4, the proposed legislation seeks to backdate the effectiveness of Sections 1 and 2 to a time prior to the public comment period and the subsequent legal challenges to ORPTS’ appraisal methodology. This is a naked attempt to close the door to the State’s citizens, their representatives in local government and other interested parties lacking a lobbying team to provide meaningful input into the State’s valuation schemes for large scale wind & solar projects.

Should any judicial action call for reconsideration or recalculation of ORPTS’ original appraisal methodology, the retroactive effective date of this legislation would invalidate the Legislature’s prior direction that ORPTS seek public input.

The proposed legislation mixes apples and oranges when seeking to exempt “appraisal models” and “discount rates” from SAPA.

Equalization rates are developed by ORPTS and municipal assessing units to correct for differences in full market value in municipal assessment rolls when a taxing district such as a county or school district spans multiple municipalities. Ratios are used to describe the aggregate percent of value ascribed to groupings of like properties, like “residential” or “commercial properties.”

Equalization rates and ratios are measurements of properties in the aggregate and are used to describe the comparative valuation of their group, be it a municipality or a set of like properties. By contrast, “appraisal models” and “discount rates” are terms used to determine value of *individual* properties. They are not a descriptor of the relative state of the aggregate assessment of a municipality or group. They are very different terms with very different purposes and to treat them in the same manner as equalization rates and ratios, controverts the Legislature’s intent in Section 575-b.

Further, equalization rates and ratios can be challenged by the municipality in a separate administrative procedure as defined in Real Property Law outside of SAPA. Municipalities were provided a single opportunity to challenge the model, along with the public, energy industry insiders and lobbyists, and by law, the New York State Energy Research and Development Authority (NYSERDA) and the New York State Assessors' Association (NYSAA). The legislature should reject this attempt to foreclose additional oversight and input by municipalities and the public at large regarding the appraisal model and discount rates.

The proposed legislation should not be made retroactive.

Section 4 of this act calls for the effective date of the legislation to be “deemed to have been in full force and effect” as of the “effective date of chapter 59 of the laws of 2021.” This appears to be a deliberate attempt to legislatively conclude the lawsuit brought by several individuals and Towns in Schoharie County in 2022. The suit, “*Town of Blenheim, et. al. v. NYS Tax and Finance*, Index No. 903157-22 (Albany Co.),” maintains that ORPTS violated SAPA in its process of adopting the appraisal methodology. The idea that any law, once signed, should, upon acceptance, have magically been in existence for years in the past is abhorrent and more suited to science fiction than the sober legislative prerogative of the Empire State. The idea that this legislation may use this time magic to attempt to disregard a valid lawsuit and the proud open government tenets of the State Administrative Procedures Act should be resoundingly rejected by the Legislature.

Section 4 applies to the entire proposed legislation. If the petitioners in the Schoharie County case are successful and the methodology is to be reconstructed, Section 1-a would allow ORPTS to establish a replacement methodology without any input from anyone, directly controverting the Legislature’s intent when it required ORPTS to consult NYSEERDA, NYSAA, and other entities. The same municipalities that, in many cases, will be forced to host large-scale industrial generating facilities that will forever alter the character and economy of their communities, will now have had no voice in the establishment of any of the calculations that will set the tax basis for these generating facilities. ORPTS would have the sole power to establish a methodology, force local assessors to data enter into the model, and saddle municipalities with meager and insufficient revenue from foreign and out-of-state developers and operators. This was not the Legislature’s intent in 2021 nor should it be in 2023.

The proposed changes to 575-b and SAPA should not be made a part of the 2023-2024 budget, and in no case, should any such change be made retroactive.

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