S T A T E O F N E W Y O R K

5460

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the town law, the village law, the executive law and the civil practice law and rules, in relation to creating the local government school property tax recovery act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "local government school property tax recovery act".

S 2. Section 268 of the town law is amended by adding a new subdivision 3 to read as follows:

3. IN ADDITION TO THE PROVISIONS OF SUBDIVISIONS ONE AND TWO OF THIS SECTION, THE TOWN BOARD MAY PROVIDE BY LOCAL LAW OR ORDINANCE FOR THE ENFORCEMENT OF THIS ARTICLE, AND FOR ANY OFFENSE THAT OCCURRED, WHEN A PROPERTY OWNER AUTHORIZES OR PERMITS A USE OF THEIR PROPERTY TO RESULT IN AN UNAPPROVED CONVERSION OF A SINGLE FAMILY RESIDENCE TO A TWO FAMILY OR TO A MULTIPLE FAMILY RESIDENCE, OR IN AN UNAPPROVED CONVERSION OF A TWO FAMILY RESIDENCE TO A MULTIPLE FAMILY RESIDENCE, WITH SUCH OFFENSE PUNISHABLE BY A FINE OF A REAL PROPERTY SCHOOL TAX EXPENSE FOR EACH SCHOOL AGE CHILD THAT RESIDES IN THE UNAPPROVED, CONVERTED RESIDENCE. FOR PURPOSES OF THIS SUBDIVISION, THE AMOUNT OF THE REAL PROPERTY SCHOOL TAX EXPENSE SHALL BE EQUAL TO THAT AMOUNT OF COST THAT THE PUBLIC SCHOOL DISTRICT IN WHICH THE RESIDENCE IS LOCATED, EXPENDS ANNUALLY TO EDUCATE THE AVERAGE CHILD IN SUCH SCHOOL DISTRICT, REDUCED BY THE AMOUNT OF FEDERAL AND STATE AID SUCH SCHOOL DISTRICT RECEIVES FOR EACH SUCH CHILD. IN THE EVENT A TOWN COLLECTS A FINE PURSUANT TO THIS SUBDIVISION, THE TOWN SHALL FORWARD THE DOLLAR AMOUNT OF THE FINE SO COLLECTED, LESS A TEN PERCENT ADMINISTRATIVE FEE, TO THE PUBLIC SCHOOL DISTRICT IN WHICH THE RESIDENCE IS LOCATED FOR THE PURPOSES OF REDUCING THE REAL PROPERTY TAX BURDEN OF THE PROPERTY OWNERS OF SUCH PUBLIC SCHOOL DISTRICT. IN THE EVENT THAT A TOWN ELECTS NOT TO PURSUE A FINE UNDER THIS SUBDIVISION,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD10846-02-3

THE PUBLIC SCHOOL DISTRICT IN WHICH THE RESIDENCE IS LOCATED, OR ANY CERTIFIED PROPERTY OWNER, MAY BRING AN ACTION FOR RECOVERY OF THE REAL PROPERTY SCHOOL TAX EXPENSE, PURSUANT TO SECTION THIRTEEN HUNDRED SIXTY OF THE CIVIL PRACTICE LAW AND RULES.

S 3. The village law is amended by adding a new section 7-714-a to read as follows:

S 7-714-A. IN ADDITION TO THE PROVISIONS OF SECTION 7-714 OF THIS ARTICLE, THE PROPER LOCAL AUTHORITIES OF THE VILLAGE MAY PROVIDE BY LOCAL LAW OR ORDINANCE FOR THE ENFORCEMENT OF THIS ARTICLE, AND FOR ANY OFFENSE THAT OCCURRED, WHEN A PROPERTY OWNER AUTHORIZES OR PERMITS A USE OF THEIR PROPERTY TO RESULT IN AN UNAPPROVED CONVERSION OF A SINGLE FAMILY RESIDENCE TO A TWO FAMILY OR TO A MULTIPLE FAMILY RESIDENCE, OR IN AN UNAPPROVED CONVERSION OF A TWO FAMILY RESIDENCE TO A MULTIPLE FAMILY RESIDENCE, WITH SUCH OFFENSE PUNISHABLE BY A FINE OF A REAL PROPERTY SCHOOL TAX EXPENSE FOR EACH SCHOOL AGE CHILD THAT RESIDES IN THE UNAPPROVED, CONVERTED RESIDENCE. FOR PURPOSES OF THIS SECTION, THE AMOUNT OF THE REAL PROPERTY SCHOOL TAX EXPENSE SHALL BE EQUAL TO THAT AMOUNT OF COST THAT THE PUBLIC SCHOOL DISTRICT IN WHICH THE RESIDENCE IS LOCATED, EXPENDS ANNUALLY TO EDUCATE THE AVERAGE CHILD IN SUCH SCHOOL DISTRICT, REDUCED BY THE AMOUNT OF FEDERAL AND STATE AID SUCH SCHOOL DISTRICT RECEIVES FOR EACH SUCH CHILD. IN THE EVENT A VILLAGE COLLECTS A FINE PURSUANT TO THIS SECTION, THE VILLAGE SHALL FORWARD THE DOLLAR AMOUNT OF THE FINE SO COLLECTED, LESS A TEN PERCENT ADMINISTRATIVE FEE, TO THE PUBLIC SCHOOL DISTRICT IN WHICH THE RESIDENCE IS LOCATED FOR THE PURPOSES OF REDUCING THE REAL PROPERTY TAX BURDEN OF THE PROPERTY OWNERS OF SUCH PUBLIC SCHOOL DISTRICT. IN THE EVENT THAT A VILLAGE ELECTS NOT TO PURSUE A FINE UNDER THIS SECTION, THE PUBLIC SCHOOL DISTRICT IN WHICH THE RESIDENCE IS LOCATED, OR ANY CERTIFIED PROPERTY OWNER, MAY BRING AN ACTION FOR RECOVERY OF THE REAL PROPERTY SCHOOL TAX EXPENSE, PURSUANT TO SECTION THIRTEEN HUNDRED SIXTY OF THE CIVIL PRACTICE LAW AND RULES.

S 4. Section 382 of the executive law is amended by adding a new subdivision 4 to read as follows:

4. IN ADDITION TO THE PROVISIONS OF SUBDIVISIONS ONE, TWO AND THREE OF THIS SECTION, WHEN A DETERMINATION IS MADE IN ACCORDANCE TO THIS SECTION, THAT A BUILDING IS IN VIOLATION OF THE UNIFORM FIRE PREVENTION AND BUILDING CODE, AS THE RESULT OF A PROPERTY OWNER AUTHORIZING OR PERMITTING A USE OF THEIR PROPERTY TO RESULT IN AN UNAPPROVED CONVERSION OF A SINGLE FAMILY RESIDENCE TO A TWO FAMILY RESIDENCE OR TO A MULTIPLE FAMILY RESIDENCE OR IN AN UNAPPROVED CONVERSION OF A TWO FAMILY RESIDENCE TO A MULTIPLE FAMILY RESIDENCE, THEN EVERY LOCAL GOVERNMENT SHALL BE ELIGIBLE TO COLLECT A FINE OF A REAL PROPERTY SCHOOL TAX EXPENSE FOR EACH SCHOOL AGE CHILD THAT RESIDES IN THE UNAPPROVED, CONVERTED RESIDENCE. FOR PURPOSES OF THIS SUBDIVISION, THE AMOUNT OF THE REAL PROPERTY SCHOOL TAX EXPENSE SHALL BE EQUAL TO THAT AMOUNT OF COST THAT THE PUBLIC SCHOOL DISTRICT IN WHICH THE RESIDENCE IS LOCATED, EXPENDS ANNUALLY TO EDUCATE THE AVERAGE CHILD IN SUCH SCHOOL DISTRICT, REDUCED BY THE AMOUNT OF FEDERAL AND STATE AID SUCH SCHOOL DISTRICT RECEIVES FOR EACH SUCH CHILD. IN THE EVENT A LOCAL GOVERNMENT COLLECTS A FINE PURSUANT TO THIS SUBDIVISION, THE LOCAL GOVERNMENT SHALL FORWARD THE DOLLAR AMOUNT OF THE FINE SO COLLECTED, LESS A TEN PERCENT ADMINISTRATIVE FEE, TO THE PUBLIC SCHOOL DISTRICT IN WHICH THE RESIDENCE IS LOCATED FOR THE PURPOSES OF REDUCING THE REAL PROPERTY TAX BURDEN OF THE PROPERTY OWNERS OF SUCH PUBLIC SCHOOL DISTRICT. IN THE EVENT THAT A LOCAL GOVERNMENT ELECTS NOT TO PURSUE A FINE UNDER THIS SUBDIVISION, THE PUBLIC SCHOOL DISTRICT IN WHICH THE RESIDENCE IS LOCATED, OR ANY CERTIFIED PROPERTY OWNER, MAY BRING AN ACTION FOR RECOVERY OF THE REAL PROPERTY SCHOOL TAX EXPENSE,

PURSUANT TO SECTION THIRTEEN HUNDRED SIXTY OF THE CIVIL PRACTICE LAW AND RULES.

S 5. The civil practice law and rules is amended by adding a new article 13-C to read as follows:

ARTICLE 13-C

SCHOOL PROPERTY TAX RECOVERY

SECTION 1360. PRIVATE ACTIONS FOR SCHOOL PROPERTY TAX RECOVERY.

S 1360. PRIVATE ACTIONS FOR SCHOOL PROPERTY TAX RECOVERY. 1. IN THE EVENT THAT A LOCAL GOVERNMENT ELECTS NOT TO PURSUE A FINE PURSUANT TO SUBDIVISION THREE OF SECTION TWO HUNDRED SIXTY-EIGHT OF THE TOWN LAW, SECTION 7-714-A OF THE VILLAGE LAW, OR SUBDIVISION FOUR OF SECTION THREE HUNDRED EIGHTY-TWO OF THE EXECUTIVE LAW, THE PUBLIC SCHOOL DISTRICT IN WHICH THE RESIDENCE IS LOCATED, OR ANY CERTIFIED PROPERTY OWNER, MAY BRING AN ACTION FOR RECOVERY OF THE REAL PROPERTY SCHOOL TAX EXPENSE FOR EACH SCHOOL AGE CHILD THAT RESIDES IN THE UNAPPROVED, CONVERTED RESIDENCE. PURSUANT TO THIS SECTION THE AMOUNT OF THE REAL PROPERTY SCHOOL TAX EXPENSE SHALL BE EQUAL TO THAT AMOUNT OF COST THAT THE PUBLIC SCHOOL DISTRICT IN WHICH THE RESIDENCE IS LOCATED, EXPENDS ANNUALLY TO EDUCATE THE AVERAGE CHILD IN SUCH SCHOOL DISTRICT, REDUCED BY THE AMOUNT OF FEDERAL AND STATE AID SUCH SCHOOL DISTRICT RECEIVES FOR EACH SUCH CHILD.

2. AN ACTION BROUGHT UNDER THIS SECTION SHALL BE COMMENCED BY A SCHOOL DISTRICT OR CERTIFIED PROPERTY OWNER, BY MEANS OF A PETITION, IN THE SUPREME COURT OR COUNTY COURT IN WHICH THE VIOLATING PROPERTY IS LOCATED. ONLY A PUBLIC SCHOOL DISTRICT IN WHICH THE VIOLATING PROPERTY IS LOCATED, OR A CERTIFIED PROPERTY OWNER PURSUANT TO SUBDIVISION THREE OF THIS SECTION, MAY BRING AN ACTION PURSUANT TO THIS SECTION.

3. IN ORDER FOR A REAL PROPERTY OWNER TO BRING AN ACTION PURSUANT TO THIS SECTION, SUCH REAL PROPERTY OWNER MUST RECEIVE A CERTIFICATION FROM THE LOCAL GOVERNMENT, SIGNED BY THE TOWN ATTORNEY OR VILLAGE ATTORNEY OF SUCH LOCAL GOVERNMENT, THAT:

A. THE LOCAL GOVERNMENT DOES NOT WISH TO PURSUE A FINE AUTHORIZED PURSUANT TO SUBDIVISION THREE OF SECTION TWO HUNDRED SIXTY-EIGHT OF THE TOWN LAW, SECTION 7-714-A OF THE VILLAGE LAW, OR SUBDIVISION FOUR OF SECTION THREE HUNDRED EIGHTY-TWO OF THE EXECUTIVE LAW;

B. THAT THE PROPERTY OWNER OWNS REAL PROPERTY WITHIN THE SAME PUBLIC SCHOOL DISTRICT IN WHICH THE VIOLATING RESIDENCE IS LOCATED; AND

C. THE LOCAL GOVERNMENT GRANTS PERMISSION TO THE PROPERTY OWNER TO BRING AN ACTION PURSUANT TO THIS SECTION.

4. A CERTIFICATION PURSUANT TO SUBDIVISION THREE OF THIS SECTION SHALL BE FILED WITH THE PETITION OF THE CERTIFIED PROPERTY OWNER.

5. AN ACTION PURSUANT TO THIS SECTION SHALL BE COMMENCED WITHIN TWO YEARS OF THE ACTION THAT WOULD VIOLATE ARTICLE SIXTEEN OF THE TOWN LAW, OR ARTICLE SEVEN OF THE VILLAGE LAW, OR ARTICLE EIGHTEEN OF THE EXECUTIVE LAW.

6. IN ANY PETITION COMMENCING AN ACTION PURSUANT TO THIS SECTION, THE PETITIONER SHALL SERVE A COPY OF THE PETITION UPON THE PROPERTY OWNER OF THE VIOLATING PROPERTY. FOR PURPOSES OF THIS SECTION, THE PROPERTY OWNER OF THE VIOLATING PROPERTY SHALL MEAN THE TITLED OWNER OF REAL PROPERTY THAT AUTHORIZED OR PERMITTED A USE OF THEIR PROPERTY WHICH RESULTED IN AN UNAPPROVED CONVERSION OF A SINGLE FAMILY RESIDENCE TO A TWO FAMILY RESIDENCE OR TO A MULTIPLE FAMILY RESIDENCE, OR IN AN UNAPPROVED CONVERSION OF A TWO FAMILY RESIDENCE TO A MULTIPLE FAMILY RESIDENCE. THE PETITION FILED AND SERVED IN THIS ACTION SHALL SPECIFY IF A LOCAL GOVERNMENT DETERMINED WHETHER THE OWNER OF THE REAL PROPERTY AUTHORIZED OR PERMITTED A USE OF THEIR PROPERTY WHICH RESULTED IN AN UNAPPROVED CONVERSION OF A SINGLE FAMILY RESIDENCE TO A TWO FAMILY RESIDENCE OR TO

A MULTIPLE FAMILY RESIDENCE, OR IN A UNAPPROVED CONVERSION OF A TWO FAMILY RESIDENCE TO A MULTIPLE FAMILY RESIDENCE.

7. IN THE EVENT THE COURT DETERMINES THAT A LOCAL GOVERNMENT DETERMINED, WITHOUT ERROR, THAT THE OWNER OF THE REAL PROPERTY AUTHORIZED OR PERMITTED A USE OF THEIR PROPERTY WHICH RESULTED IN AN UNAPPROVED CONVERSION OF A SINGLE FAMILY RESIDENCE TO A TWO FAMILY RESIDENCE OR TO A MULTIPLE FAMILY RESIDENCE, OR IN AN UNAPPROVED CONVERSION OF A TWO FAMILY RESIDENCE TO A MULTIPLE FAMILY RESIDENCE, THEN THE PETITIONER SHALL BE ENTITLED TO A RECOVERY PURSUANT TO SUBDIVISION EIGHT OF THIS SECTION. IN THE EVENT THE COURT DETERMINES THAT A LOCAL GOVERNMENT DID NOT DETERMINE, OR DID NOT DETERMINE WITHOUT ERROR, THAT THE OWNER OF THE REAL PROPERTY AUTHORIZED OR PERMITTED A USE OF THEIR PROPERTY WHICH RESULTED IN AN UNAPPROVED CONVERSION OF A SINGLE FAMILY RESIDENCE TO A TWO FAMILY RESIDENCE OR TO A MULTIPLE FAMILY RESIDENCE, OR IN AN UNAPPROVED CONVERSION OF A TWO FAMILY RESIDENCE TO A MULTIPLE FAMILY RESIDENCE, THEN THE COURT SHALL MAKE A DETERMINATION WHETHER THE OWNER OF THE REAL PROPERTY AUTHORIZED OR PERMITTED A USE OF THEIR PROPERTY WHICH RESULTED IN AN UNAPPROVED CONVERSION OF A SINGLE FAMILY RESIDENCE TO A TWO FAMILY RESIDENCE OR TO A MULTIPLE FAMILY RESIDENCE, OR IN AN UNAPPROVED CONVERSION OF A TWO FAMILY RESIDENCE TO A MULTIPLE FAMILY RESIDENCE, IN VIOLATION OF ARTICLE SIXTEEN OF THE TOWN LAW, OR ARTICLE SEVEN OF THE VILLAGE LAW, OR ARTICLE EIGHTEEN OF THE EXECUTIVE LAW. IF THE COURT DETERMINES THAT THE OWNER OF THE REAL PROPERTY AUTHORIZED OR PERMITTED A USE OF THEIR PROPERTY WHICH RESULTED IN AN UNAPPROVED CONVERSION OF A SINGLE FAMILY RESIDENCE TO A TWO FAMILY RESIDENCE OR TO A MULTIPLE FAMILY RESIDENCE, OR IN AN UNAPPROVED CONVERSION OF A TWO FAMILY RESIDENCE TO A MULTIPLE FAMILY RESIDENCE, IN VIOLATION OF ARTICLE SIXTEEN OF THE TOWN LAW, OR ARTICLE SEVEN OF THE VILLAGE LAW, OR ARTICLE EIGHTEEN OF THE EXECUTIVE LAW, THEN THE PETITIONER SHALL BE ENTITLED TO A RECOVERY PURSUANT TO SUBDIVISION EIGHT OF THIS SECTION.

8. UPON DETERMINATION OF THE COURT, A PETITIONER SHALL BE AWARDED A RECOVERY OF A REAL PROPERTY SCHOOL TAX EXPENSE FOR EACH SCHOOL AGE CHILD THAT RESIDES IN THE UNAPPROVED, CONVERTED RESIDENCE. FOR PURPOSES OF THIS SUBDIVISION, THE AMOUNT OF THE REAL PROPERTY SCHOOL TAX EXPENSE SHALL BE AS DEFINED PURSUANT TO SUBDIVISION ONE OF THIS SECTION. THE PETITIONER SHALL FURTHER BE ENTITLED TO RECOVER REASONABLE COSTS, DISBURSEMENTS AND ATTORNEYS FEES, UPON REVIEW OF THE COURT. ANY RECOVERY AWARDED PURSUANT TO THIS SECTION SHALL BE PAID BY THE RESPONDENT INTO THE COURT. UPON PAYMENT OF THE RECOVERY BY THE RESPONDENT, THE COURT SHALL PROVIDE THE PETITIONER WITH AN AMOUNT OF TEN PERCENT OF THE REAL PROPERTY SCHOOL TAX EXPENSE FOR EACH SCHOOL AGE CHILD THAT RESIDES IN THE UNAPPROVED, CONVERTED RESIDENCE, TOGETHER WITH REASONABLE COSTS, DISBURSEMENTS AND ATTORNEYS FEES. THE COURT SHALL THEREAFTER FORWARD THE REMAINING RECOVERY PAID BY THE RESPONDENT, TO THE PUBLIC SCHOOL DISTRICT IN WHICH THE VIOLATING RESIDENCE IS LOCATED, FOR THE PURPOSES OF REDUCING THE REAL PROPERTY TAX BURDEN OF THE PROPERTY OWNERS OF SUCH PUBLIC SCHOOL DISTRICT.

S 6. This act shall take effect on the one hundred eightieth day after it shall have become a law.