

TAX CAP AND ITS APPLICATION TO **FIRE DISTRICTS** **OF THE STATE OF NEW YORK**

On June 24th, 2011, Senate Bill 5856, Assembly Bill 8518 was introduced in the New York State Legislature. This bill was a negotiated bill resulting from earlier versions of similar legislation that was introduced separately in the Senate and Assembly relative to real property tax caps, rent regulation and mandate relief. The bill passed both houses on June 24th, 2011 and was signed by Governor Cuomo as Chapter 97 of the Laws of 2011.

There are still certain questions to be resolved relative to the implementation and application of this bill to local governmental entities throughout the State including, Counties, Cities, Towns, Villages, Fire Districts and other special districts.

This law does apply to fire districts. Recently members of various municipal associations met with the New York State Comptroller's Office to discuss the implementation of this statute. While the New York State Comptroller's Office is receptive to your various questions, they have indicated to us and to all of the Associations, that they will soon be rolling out a publication of frequently asked questions which may answer many of your specific questions. It is hoped that copies of these questions and answers will be presented and available to you by mid to late August.

The Association of Fire Districts stressed the need to the Comptroller's Office for this information to get out quickly as many Commissioners and Districts are presently in the process of developing their budgets which, must be submitted according to the time frame set out in a separate budget schedule in this publication. We emphasized the fact that we must adopt our preliminary budget by the last week in September, hence, we need to know what the parameters are for the tax cap.

There is also information that must be provided to us by the Department of Taxation and Finance relative to the "tax base growth factors". Pursuant to the new statute, all local governments subject to the provisions of this section, including fire districts, shall, prior to adopting a budget for the coming fiscal year, submit to the State Comptroller in a form and manner as State Comptroller may describe, any information necessary for calculating the tax levee limit for the coming fiscal year. This form needs yet to be developed by the Comptroller's Office. As previously noted, I have stressed the fact that the Comptroller's Office needs to get this format out to us as soon as possible so we can properly comply with the new statute.

There are certain exceptions to the tax cap, including contributions to the New York State and Local Employees Retirement System caused by growth in the system's average actuarial contributions rate minus 2 percentage points and a similar process relative to local police and fire retirement systems. For those districts which have combination departments, this exception may prove important. I would also note that there is an exception relative to tax levees necessary for expenditures resulting from Court Orders or Judgments against the local government arising out

of a Tort Action for any amount that exceeds 5% of the total tax levee from the prior fiscal year.

The statute goes on to provide that “the local government may adopt a budget that requires a tax levee that is greater than the tax levee limit for the coming fiscal year not including any levee necessary to support the expenditures pursuant to subparagraphs i through iv of paragraph G of subdivision 2 of this section only if the governing body of such local government first enacts by a vote of 60% of the total voting power of such body a local law to override such limit for such coming fiscal year only or, in the case of a district or fire district a resolution approved by a vote of 60% of the total voting power of such body to override such limit for such coming fiscal year only”.

In discussions with the New York State Comptroller’s Office we are seeking further clarification as to the clear import of this particular language. As more information becomes available it has been indicated to us that it will be available on the Comptroller’s website and the Association of Fire Districts intends to provide you with a link through our website to that website.

Section 103 of the General Municipal Law is also amended by this bill adding a new subdivision 1b to read as follows:

A political subdivision or any district therein shall have the option of purchasing information technology and telecommunications hardware, software and professional services through cooperative purchasing permissible pursuant to Federal General Services Administration Information Technology Schedule 70 or any successor schedule. A political subdivision or any district therein that purchases through the general services administration schedule 70 information technology and consolidated schedule contract shall comply with the federal schedule ordering procedures as provided in the federal acquisition regulation section .405-1 or .405-2 of successor regulations whichever is applicable. Adherence to such procedure shall constitute compliance with competitive bidding requirement under this section.

Section 104 of the General Municipal Law was also amended to allow for purchases in addition to the Office of the General Services from certain federal contracts. A new subparagraph 2 was added stating “notwithstanding provisions of section 103 of this article or any other general, special or local law any officer, board or agency of a political subdivision or a district therein may make purchases from the general services administration supply schedules pursuant to Section 211 of the Federal E Government Act of 2001 PL107-347, and pursuant to Section 1122 of the National Defense Authorization Act for fiscal year 1994, PL103-160, or any successor schedules in accordance with procedures established pursuant thereto. Prior to making such purchases, the officer, board or agency shall consider whether such purchases will result in cost savings after all factors including charges for services, material and delivery have been considered.

Lastly, the aforementioned statute does provide some mandate relief in the process to obtain same. Section 204-A of the State Administrative Procedure Act, was amended to provide that two or more local governments acting jointly, may seek approval for a alternative method of implementing a regulatory mandate by submitting to the appropriate state agency a petition that

shall include but not limited to information sufficient to establish that the proposed alternate method of implementation is consistent with and will effectively carry out the objectives of the regulatory mandate.

Fire Districts will be made aware of further information relative to these very important statutes as they become available to us through the New York State Comptroller's Office, Department of Taxation and Finance and other State Agencies.