



Working for
Wilderness

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2018 Memorandum in Opposition

Bill: Proposed Executive Budget S7509-A/A9509-A, Article VII Language Bill – Revenue, Part F

Title: relates to taxable state land; provides for the method of tax calculation for such land.

The Adirondack Mountain Club (ADK) Opposes this Legislation.

In Article VII Language Bill – Revenue, Part F - Taxable State Land, the Executive Budget proposes to change the current ad valorem tax assessments on Forest Preserve lands which are currently calculated by local assessors into state calculated Payment in Lieu of Taxes (PILOTs) at 2017 amounts. This Executive Budget property tax proposal imposes a tax cap on any increases in state tax payments at the lesser of the prior year's inflation rate or two percent. In legal and practical effect, the state would be taking over the function of assessment of the value of state Forest Preserve land from local assessors and substituting a state imposed tax cap on the taxes it pays to communities.

The final budget must restore existing provisions of Real Property Tax law sections 532, 534 and 542 that annually authorize the payment of ad valorem taxes to local government and school taxing districts hosting the Adirondack and Catskill Forest Preserve, State Forests, State Parks, and other state lands and conservation easements across New York.

This PILOT and tax cap proposal represents a radical and unlawful departure from the current method of determining the amount of real property taxes paid by the state for the three million acres of Forest Preserve in the 16 Forest Preserve counties, and in hundreds of thousands of acres of other state lands across New York. Section 542 of the real property tax law (RPTL) states that the assessment of value of state forest lands made by the town assessors was binding and conclusive on the State Board of Equalization and Assessment

(SBEA) in the same way that it would be binding on private property owners. See Section 542 of the RPTL and *Town of Shandaken v. State Bd. Of Equalization and Assessment* (3rd Dept., 1983) 97 A.D. 2d 179, affirmed 63 N.Y. 2d 442 (Court of Appeals, 1984). Section 542 and the Shandaken decision clearly limits the role of the SBEA in the valuation and assessment of state lands to “determination that the assessment made by the local assessors is in conformity with the applicable equalization rate. Authority for determination of valuation is vested in the local assessors.” See *Town of Shandaken*, 63 N.Y. 2d 442. The Court of Appeals opined that nothing in RPTL sections 532, 534, and 542 granted initial or final valuation authority to the State Board (SBEA). See 63 N.Y.2d at pg. 447.

The Executive tax freeze and proposed abandonment of ad valorem taxes on the state forest preserve, state reforestation lands, conservation easements and the largest state parks statewide and the proposed “tax cap” on the state imposed PILOTS is a complete departure from current statutory and case law. We believe that only the Legislature can enact such a radical change in the way real property taxes are determined for some 5 million acres of state forest preserve, state reforestation lands, conservation easements and state parks in over 50 counties in the state. Local government leaders are unified in their belief that this will cost communities statewide millions of dollars in state tax payments and a massive shift of property tax levies on private property owners in those counties.

In 1885-1886, a legislative compromise was made to allow for the creation of the Forest Preserve which was the passage of a law in 1886 that provided for all lands then or thereafter included in the Forest Preserve to be “assessed and taxed at a like valuation and at a like rate as those at which similar lands of individuals within such counties are assessed and taxed.” This was the predecessor of RPTL section 542 which itself was upheld in the Shandaken tax case by the Court of Appeals. I believe that it is unlawful for the Division of the Budget (DOB) to now attempt to abrogate the key elements of the 1885-1886 legislative compromise that enabled the Forest Preserve to be created, namely local assessment and valuation and treatment of state lands and tax treatment of Forest Preserve lands in the same manner as private lands. If DOB has its way, the state will hereinafter determine how much it is willing to pay. This was not what the state agreed to in 1885-1886 and not how the Court of Appeals ruled in the Shandaken case in 1983. See, Laws of 1886, Chapter 280, section 78.

Since 1886, the RPTL has authorized the State to pay taxes on its Forest Preserve as if it were privately owned. Since all NYS residents benefit enormously from these “forever wild” state forests, it was thought then, as now, that all NYS taxpayers ought to share in full taxes to the hundreds of affected small towns and school districts in the Adirondack and Catskill Mountains.

The Executive proposal to cap these taxes at current levels, to increase the payments only according to a state determined growth factor and to consider these annual payments in lieu of taxes (PILOT), not an ad valorem tax for all purposes, will short change many Adirondack and Catskill communities. Many of these communities are comprised of more than 50% Forest Preserve. Fifty percent or more of their tax payments come from the State land. In that eventuality, private landowners will invariably be asked to make up the difference through tax shifting.

Executive Proposal for Real Property Tax Law Impacts Districts State-Wide

The Governor's proposal effects not only the Adirondacks and Catskills, but districts that host state land across New York State. Although the practice of taxing state land began with legislation in 1886 that permitted taxation of the Adirondack and Catskill Forest Preserve, since that time taxability has been extended to reforestation lands, some institutional properties, and parks including Letchworth State Park (1914), the Palisades, Bear Mountain, and Harriman State Parks (1916), the Allegany State Park (1924, 1928), the Saratoga State Park (1930), and the Hudson Highlands and Baird State Parks (1941-42).ⁱ In 1932 reforestation lands were made taxable, including the beautiful lands of our state forest system, and unique areas such as Zoar Valley. Additionally, wildlife management areas, canal lands, and lands acquired for flood control have also been made taxable over the years. On privately held conservation easement lands across the state, the rights held by the state are also taxable.ⁱⁱ

Governor Cuomo has made great progress in gaining the confidence and support of local government leaders to accepting and even supporting the purchase of public lands as an economic benefit to their towns and counties. This very ill-considered proposal by Tax and Finance and the Division of Budget represents a great threat to all that the Governor has accomplished.

Finally, it is critical to recognize that local governments have veto power over state land acquisitions in New York. This proposed action to change the process of assessment and to cap payments has caused local government leaders to threaten to veto any new land purchases of forest preserve or state parks.

This PILOT and Tax Cap proposal from the Executive Budget's Article 7 language, must not be included in the final budget.

The Adirondack Mountain Club (ADK) Opposes this Legislation.

ⁱ <https://www.tax.ny.gov/research/property/reports/landcomp/section2.htm#4>

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