

Legislative Update

Submitted September 19, 2007 by Mark Castiglione

New York State

Outdoor wood boilers

S.3833 Marcellino

A.1982 Lupardo

An act to amend the Environmental Conservation Law, in relation to regulating outdoor wood-buring devices in New York State

Summary: Outdoor wood boilers are furnaces installed outside the building to provide hot water heat. The use of outdoor wood boilers would be prohibited from May 1st to September 30th. The bill also outlines certain siting requirements for wood boilers. Wood boilers would be required to be at least 200 feet away from a residence that does not have a wood boiler.

Status: In committee

Tax rebate for infrastructure improvements

S. 1483 Skelos

A. 871 Destito

An Act to amend the general municipal law, in relation to authorizing municipalities to re-direct a portion of the real property taxes made by certain project occupant

Summary: Authorizes municipalities to re-direct real property tax payments made by project occupants which agree to invest in or construct infrastructure improvements for any economic development projects; such re-directed payments shall be used to retire any debt incurred for the construction and development of such infrastructure improvements.

Status: Passed the Senate

Smart Growth for the New Century Act

S.4338a LaValle

A.7271a Hoyt

An act to amend the general municipal law, the environmental conservation law, the public authorities law, the agriculture and markets law, the real property tax law, the state finance law and the executive law, in relation to enacting the “Smart Growth for the New Century Act”

Summary: The Smart Growth for the New Century Act would promote a voluntary smart growth planning process that communities could undertake both individually and jointly. Projects consistent with the smart growth plans created would be eligible for low interest loans through a smart growth revolving loan fund (established by the bill as well) and would be eligible for other incentives like real property tax exemptions and priority for state financial assistance.

The bill also established a “smart growth compact” so that communities can work together to establish a shared community vision. Community compact councils would be empowered to create these compacts. Projects that are inconsistent with an area’s compact plan will not be approved by any government entity or supported by state financial assistance. This bill also creates an office of local assistance within the Department of State to provide technical, scientific and financial assistance to localities that undertake smart growth planning.

Status: In committee

Vested Rights

S.3852a Flanagan, et al.
A.6023 Bradley, et al.

An act to amend the general municipal law, in relation to vested rights relating to land development

Summary: This bill would amend Article 7B of the General Municipal Law by adding a new section 150 relative to the ability of a property owner to develop or alter his/her property under local codes, laws, ordinances, rules and regulations which are in existence at the time of filing of the application for approval of the improvement, development or addition with an Environmental Assessment Form, or alternatively, at the discretion of the applicant upon the filing of a Draft Environmental Impact Statement.

The bill states there shall be a rebuttable presumption that municipal zoning, planning and environmental enactments by a Village, Town or City regulating the development of land as of the filing date of a complete application for a project shall remain applicable to the proposed project for a period of **no less than six years** as long as it is being pursued with due diligence by the applicant.

Exceptions would be made for changes to federal and state law or if a municipality could should by clear and convincing evidence that due to newly discovered

information or change in circumstances it is likely that harm to the public or environment would result if the exception was not made.

Status: Committed to Rules

State Smart Growth Public Infrastructure Policy Act

S.4369 LaValle

A.7335 Hoyt, et al

An act to amend the environmental conservation law, in relation to establishing a state smart growth public infrastructure policy act

Summary: Establishes the "state smart growth public infrastructure policy act"; provides privity in public funding for projects which use, maintain or improve existing infrastructure and which protect and preserve natural resources and authorizes each state infrastructure agency to create a smart growth advisory committee.

The bill also establishes "State Smart Growth Infrastructure Criteria." State agencies designated as "infrastructure agencies" would need to examine all project financed with consideration to the smart growth criteria. The bill would further establish a preference for the construction of state facilities in established urban and suburban centers, prioritize projects located in designated development areas identified in locally adopted land use plans.

Status: Passed Assembly, referred to Senate Environmental Committee

Freshwater Wetlands

A.7133 Sweeney, et al.

S.3835 Marcellino, et al.

An act to amend the environmental conservation law, in relation to freshwater wetlands and repealing section 24-1305 of such law relating thereto

Summary: The bill changes the definition of freshwater wetlands; repeals section relating to the applicability of the freshwater wetlands article; provides authority of DEC over wetlands which are one acre or more; amends permitting requirements for subdivision of land. The bill would give the DEC regulatory authority over Freshwater wetlands of one acre or more in size and other wetlands of significant local importance.

Status: Passed Assembly, referred to Senate Environmental Committee

Open Burning

A5475 Koon, et al.

An act to amend the environmental conservation law, in relation to open burning of solid waste

Summary: The bill would prohibit the open burning of solid waste. Exceptions to the burning ban would include certain organic material such as yard waste, landscaping waste and some waste materials relating to agriculture. Current regulations allow for the open burning of solid waste in communities with less than 20,000 people. The bill defines open burning as a process that is not enclosed, does not burn completely, and lacks any pollution control devices.

Status: Passed Assembly, referred to Senate Environmental Committee

Redefinition of 'Building'

S.3022 Seward

A.4367 Magee

An act in retaliation to excluding permanent structure used in conjunction with the working of a farm operation from the definition of the term "building" for the purposes of the New York State Uniform Fire Prevention and Building Code Act

Summary: New language redefines the term building. "The Term 'Building' shall not include any permanent structure used in conjunction with the working of a farm operation as defined in article twenty-five-AA of the Agriculture and Markets Law."

The New York Farm Bureau points out certain aspects as inappropriate in relation to farms. "The code requires all 'dry vegetation' which could pose a fire hazard be removed from buildings. This clearly does not recognize the need for farms to store hay as part of their business operation."

Status: Signed by the Governor

Eminent Domain Amendment

S.2302 DeFrancisco

A.660 Christensen

Concurrent resolution of the Senate and the Assembly proposing an amendment to section 7 of article 1 of the constitution, in relation to the taking of private property;

and repealing section 7 of article 1 of the constitution relating to just compensation for taking private property

Summary: The act proposes an amendment to the NYS Constitution to prohibit private property from being taken for the benefit of another private interest. The bill calls for the amendment to include the following provisions:

(A) With just compensation paid, private property may be taken only when necessary for the possession, occupation, and enjoyment of land by the public at large, or by public agencies.

(B) Except for privately owned common carriers and public utilities, private property shall not be taken for use by private commercial enterprise, for economic development, or for any other private use, except with the consent of the owner. Property shall not be taken from one owner and transferred to another, on the grounds that the public will benefit from a more profitable private use.

(C) Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

Status: Referred to Attorney General for opinion and to Rules Committee in Senate

Eminent Domain Procedure Law

S.915: DeFrancisco

A.661: Christensen

An act to amend the Eminent Domain Procedure Law, in relation to the use of eminent domain

Summary: Establishes eminent domain shall only be used for public projects; establishes after any Industrial Development Agency [IDA] approves the use of eminent domain, the county legislature or the New York city council shall vote to determine whether or not to condemn such property; establishes a condemnor shall reimburse a condemnee any relocation costs. The bill also stipulates that the use of eminent domain by an IDA be subject to approval by the governing body of the county in which the IDA is located.

Status: In committee

Mediation

S.3232 Winner

A.5482 Koon

An act in relation to authorizing the use of mediation in municipal land use decisions

Summary: The bill adds a new section, 99-v, to the General Municipal Law to grant local governments specific statutory authority to establish procedures (by local law or ordinance) to use mediation for reaching land use decisions. The proposed language emphasizes the voluntary, cooperative nature of mediation (with its use of a neutral party) for addressing the differences and reaching agreement among interested parties. As envisioned in the proposed legislation, mediation would be employed to promote timely and effective land use decisions by working to resolve conflicts in such areas as: review and approval of comprehensive plans, rezonings, subdivision plats, site plans and special use permits. The bill provides that mediation would be used to supplement, not replace, existing municipal review procedures and decision making by a local government. Time limits associated with such reviews could be suspended during the alternate resolution process agreed to by the applicant and the municipality.

Status: Passed Senate, referred to Local Government Committee in Assembly

Limits municipal regulation of telecommunication service providers

A.04545 Morelle

An Act to amend the general municipal law, in relation to enacting the "state public rights-of-way act"

Summary: The bill defines terms; outlines applicability; places a restriction on the ability of political subdivisions to further regulate the activities of telecommunications providers; provides for judicial review; requires insurance coverage for any telecommunication service provider which constructs facilities upon a public right-of-way; further authorizes the political subdivision to require the posting of a performance bond in an amount not to exceed the reasonable costs to return the public rights-of-way to its original condition; makes related changes.

Status: Referred to Local Government Committee, no Senate sponsor