RSA

Rent Stabilization Association | 123 William Street, New York, NY 10038 | www.rsanyc.org

MEMORANDUM IN OPPOSITION
S2943B / A4047B

The Rent Stabilization Association of New York City represents approximately 25,000 diverse owners and managers who collectively manage more than one million apartments in every neighborhood and community throughout New York City. We thank the Committee for giving us the opportunity to submit this memorandum in opposition to S2943B/A4047B, which significantly alters the RSL and the method of calculating, recalculating, and imposing the HSTPA with retroactive effect on legal regulated rents, in part as a direct response to the Court of Appeals holding in *Regina Metropolitan Co. v. New York State Div. of Hous. and Community Renewal*, 35 NY3d 332 (2020). The Court of Appeals found that imposing provisions of the HSTPA retroactively directly violates due process, specifically holding in *Regina* that although "the Legislature appears to have intended that the retroactive period be bounded only by the length of the apartment's rental history…such a vast period of retroactivity upends owners' expectations of repose relating to conduct that may have occurred many years prior to the recovery period…" This blatant attempt to circumvent the Court of Appeals (which relied on caselaw from the Supreme Court of the United States in striking down the retroactive application of the HSTPA based on long-standing principles of fairness and due process) is inherently unconstitutional and would almost certainly be immediately challenged on those grounds. It is also extremely troubling that the Legislature would attempt to circumvent a Court of Appeals ruling, in contravention of the checks and balances that exist between the judiciary and legislative branches of the government; it is not legally appropriate or sound for the Legislature to insist on the constitutionality of the application of law that the Court of Appeals has already ruled unconstitutional.

S2943B, if enacted in its current form, will permit the recalculation of the legal regulated rent from June 14, 2019 forward, even if this recalculation contradicts or would otherwise be forestalled by a prior court or agency order that was issued prior to June 14, 2019. This upends the finality of prior court/DHCR orders and violates the principle of res judicata, i.e., the doctrine of claim preclusion that protects individuals from endlessly litigating the same issue over and over again once it has been properly decided by the proper authority). It logically follows that eliminating the finality of orders every few years as a political response to our highest court's directive that property owners receive fair treatment under the law makes it impossible for such owners to economically manage their buildings; how can an owner rely on the projected revenue from his or her building in order to effectuate repairs and meet other operational costs when it is possible that five years from now, the Legislature will retroactively recalculate the legal regulated rents and subject such an owner to potential treble damages liability that he or she could not have possibly foreseen or anticipated? What prospective owner will want to purchase, or bank want to finance the purchase of, rent-regulated buildings if it is possible for the Legislature to unconstitutionally impose retroactive application of rent calculation methods? The Court of Appeals engaged in the same analysis, finding that the "retroactive application of the overcharge calculation amendments would create or considerably enlarge owners' financial liability for conduct that occurred, in some cases, many years or even decades before the HSTPA was enacted and for which the prior statutory scheme conferred on owners clear repose." *Regina* at 349. In finding that the HSTPA could not be

applied retroactively in the case before them, despite the argument that the Legislature intended such retroactive application, the Court of Appeals provided that while "'we are, of course, mindful…of the responsibility…to deter to the Legislature in matters of policymaking'…it is the role of the judicial branch to 'interpret and safeguard constitutional rights and review challenged acts of our co-equal branches of government – not in order to make policy but in order to assure the protection of constitutional rights'…[and a]s to the HSTPA, today we fulfill this quintessential judicial function in holding that a limited suite of enforcement provisions may not be applied retroactively…" *Regina* at 349-350, citing *Campaign for Fiscal Equity v. State of New York*, 100 NY3d 893, 925 (2003). It must also be noted that to the extent the bill codifies a method for calculating rents "where fraud is not established" by requiring a court or agency to use "the average of rents for comparable rent stabilized apartment in the building, rather than the default formula applicable to cases involving fraud", the bill misstates the law in effect prior to June 14, 2019, and this standard should not be codified.

Accordingly, the RSA opposes this bill.