

**S 7553** LANZA,,,,,,,,,,,,, Same as [A 11226](#) Diaz R  
(MS)  
ON FILE: 04/14/08 Real Property Tax Law  
TITLE....Provides a tax abatement for construction  
of a "green roof" on buildings in New York city  
04/11/08 REFERRED TO CITIES  
05/28/08 REPORTED AND COMMITTED TO  
FINANCE  
06/10/08 COMMITTEE DISCHARGED AND  
COMMITTED TO RULES  
06/10/08 ORDERED TO THIRD READING  
CAL.1627  
06/11/08 PASSED SENATE  
06/11/08 DELIVERED TO ASSEMBLY  
06/11/08 referred to real property taxation  
06/23/08 substituted for a11226  
06/23/08 ordered to third reading rules cal.582  
06/23/08 passed assembly  
06/23/08 returned to senate  
07/25/08 DELIVERED TO GOVERNOR  
08/05/08 SIGNED CHAP.461

**A11226** Diaz R (MS) Same as [S 7553](#) LANZA  
Real Property Tax Law  
TITLE....Provides a tax abatement for construction of a  
"green roof" on buildings in New York city  
05/22/08 referred to real property taxation  
06/16/08 reported referred to codes  
06/18/08 reported referred to ways and means  
06/19/08 reported referred to rules  
06/19/08 reported  
06/19/08 rules report cal.582  
06/19/08 ordered to third reading rules cal.582  
06/23/08 substituted by s7553  
**S07553 LANZA**  
04/11/08 REFERRED TO CITIES  
05/28/08 REPORTED AND COMMITTED TO  
FINANCE  
06/10/08 COMMITTEE DISCHARGED AND  
COMMITTED TO RULES  
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**LANZA, MALTESE**

Amd S467-a, add Art 4 Title 4-B SS499-aaa - 499-ggg, RPT L; amd S6509, Ed L  
Provides a tax abatement for construction of a "green roof" on buildings in New York city.  
EFF. DATE 08/05/2008

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**NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S7553

**SPONSOR:** LANZA| | | | | | | | | | | | | | | | | | | | | |

**TITLE OF BILL:**

An act to amend the real property tax law and the education law, in relation to a green roof tax abatement for certain properties in a city of one million or more persons

**SUMMARY OF PROVISIONS:**

This bill would amend Article 4 of the Real Property Tax Law ("RPTL") by adding a new Title 4-B, which would provide for a one-year tax abatement for the construction of a "green roof" on a class one, two or four building in the City of New York. In general, a green roof is an addition to a roof that includes, among other things, a growth medium and a vegetation layer of drought resistant and hardy plant species.

The amount of the abatement would be \$4.50 per square foot of green roof: limited to the lesser of \$100,000 or the building's tax liability for the year in which the abatement is taken. The green roof tax abatement is a pilot program that would sunset March 15,2013.

The bill provides for a tax abatement application and approval process (proposed RPTL § 499-ccc), conditions the benefit on compliance during the year in which the benefit is taken with applicable provisions of law, maintaining the green roof: permission to inspect the green roof and related structures, and payment of real estate taxes, water and sewer charges, payments in lieu of taxes or other municipal charges (proposed RPTL § 499-ddd), and includes a process for revocation for non-compliance (proposed RPTL § 499-eee).

The green roof tax abatement would be applied by the City's Department of Finance, and the tax abatement program would be administered by one or more City agencies or departments designated for such purpose by the Mayor (proposed RPTL § 499-fff).

The bill also includes ancillary amendments to RPTL § 467-a(2)(f) and Education Law § 6509. The amendment to RPTL § 467-a(2)(f) provides that a green roof tax abatement will not serve to prevent cooperative and condominium apartments in the City from obtaining a partial tax abatement pursuant to RPTL § 467-a. The amendment to Education Law § 6509 provides for the discipline by the Board of Regents of architects and engineers reported to have engaged in any misconduct in the making certifications under Title 4-B.

### REASONS FOR SUPPORT:

The green roof tax abatement is aligned with Mayor Bloomberg's long-term sustainability plan, PlaNYC, released in April 2007. PlaNYC promotes the use of Best Management Practices (BMPs) to control and capture stormwater using distributed and natural infrastructure solutions. Source control stormwater management is a critical component of the City's strategy to reduce Combined Sewer Overflows (CSOs). As little as 1/10 of an inch of rain can overwhelm the capacity of our sewer infrastructure resulting in 2 billion gallons of raw sewage annually entering the City's rivers, creeks, canals and other bodies of water. The use of BMPs, such as green roofs, to divert storm water from our combined sewer system can prove to be an innovative and cost-effective approach to improve and protect our water quality.

A green roof can be a tended roof garden or a more self-maintaining ecology. Green roofs reduce the volume of runoff by absorbing or storing water. According to a recent study by Riverkeeper, a 40-square-foot green roof could result in the capture of 810 gallons of storm water per year. This approach to stormwater capture on a large scale has the potential to significantly reduce the strain on the municipal sewer infrastructure during precipitation events. Green roofs offer additional benefits such as improved air quality, insulation for both improved energy efficiency and noise reduction, and mitigation of the urban heat island effect. Green roofs also provide natural habitats and wildlife corridors for migrating species, and act as a carbon sink.

Green roofs provide considerable benefits to New York City, but the expense of installation is often prohibitive to homeowners. The proposed property tax abatement would off-set some of these installation costs (about 35% of the costs of installing a green roof on a standard roof). The results of this pilot program, which sunsets on March 15, 2013, will be reassessed for extension and the inclusion of other stormwater management technologies.

The green roof tax abatement incentive is part of a larger planning process underway in the City to promote BMPs on a Citywide scale. The Mayor's Office has convened over 15 relevant City agencies to analyze BMP strategies and plan for greater implementation on both public and private land. The results of this effort will be released in October 2008.

Accordingly, the Mayor urges the earliest possible favorable consideration of this proposal by the Legislature.

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LAWS OF NEW YORK, 2008

CHAPTER 461

AN ACT to amend the real property tax law and the education law, in relation to a green roof tax abatement for certain properties in a city of one million or more persons

Became a law August 5, 2008, with the approval of the Governor.  
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (f) of subdivision 2 of section 467-a of the real property tax law, as added by chapter 273 of the laws of 1996, is amended to read as follows:

(f) For purposes of this subdivision, a property shall be deemed not to be receiving complete or partial real property tax exemption or tax abatement if the property is, or certain dwelling units therein are, receiving benefits pursuant to section four hundred, four hundred two, four hundred four, four hundred six, four hundred eight, four hundred ten, four hundred ten-a, four hundred twelve, four hundred twelve-a, four hundred sixteen, four hundred eighteen, four hundred twenty-a, four hundred twenty-b, four hundred thirty-six, four hundred fifty-eight, four hundred fifty-eight-a, four hundred sixty-two, four hundred sixty-seven, [~~or~~] four hundred sixty-seven-b, or four hundred ninety-nine-bbb of this article, or if the property is receiving a tax abatement but not a tax exemption pursuant to section four hundred eighty-nine of this article.

§ 2 Article 4 of the real property tax law is amended by adding a new title 4-B to read as follows:

TITLE 4-B

GREEN ROOF TAX ABATEMENT FOR CERTAIN PROPERTIES

IN A CITY OF ONE MILLION OR MORE PERSONS

Section 499-aaa. Definitions.

499-bbb. Real property tax abatement.

499-ccc. Application for tax abatement.

499-ddd. Continuing requirements.

499-eee. Revocation of tax abatement.

499-fff. Enforcement and administration.

499-ggg. Tax lien and interest.

§ 499-aaa. Definitions. When used in this title, the following terms shall have the following meanings:

1. "Applicant" shall mean (a) with respect to an eligible building held in the cooperative or condominium form of ownership, the board of managers of a condominium or the board of directors of a cooperative apartment corporation, or (b) with respect to any other eligible building, the owner of such building.

2. "Application for tax abatement" shall mean an application for a green roof tax abatement pursuant to section four hundred ninety-nine-ccc of this title.

EXPLANATION--Matter in italics is new; matter in brackets [~~-~~] is old law

to be omitted.

3. "Architect" shall mean a person licensed and registered to practice the profession of architecture under the education law.

4. "Compliance period" shall mean the tax year in which a tax abatement is taken.

5. "Department of finance" shall mean the department of finance of a city having a population of one million or more persons.

6. "Designated agency" shall mean one or more agencies or departments of a city having a population of one million or more persons that are designated by the mayor of such city to exercise the functions, powers and duties of a designated agency pursuant to this title.

7. "Eligible building" shall mean a class one, class two or class four real property, as defined in subdivision one of section eighteen hundred two of this chapter, located within a city having a population of one million or more persons. No building shall be eligible for more than one tax abatement pursuant to this title.

8. "Eligible rooftop space" shall mean the total space available on an eligible building to support a green roof, as certified by an engineer or architect or other certified or licensed professional whom a designated agency designates by rule.

9. "Engineer" shall mean a person licensed and registered to practice the profession of engineering under the education law.

10. "Green roof" shall mean an addition to a roof of an eligible building that covers at least fifty percent of such building's eligible rooftop space and includes (a) a weatherproof and waterproof roofing membrane layer that complies with local construction and fire codes, (b) a root barrier layer, (c) an insulation layer that complies with the Energy Conservation Construction Code of New York state and local construction and fire codes, (d) a drainage layer that complies with local construction and fire codes and is designed so the drains can be inspected and cleaned, (e) a growth medium, including natural or simulated soil, with a depth of at least two inches, (f) if the depth of the growth medium is less than three inches, an independent water holding layer that is designed to prevent the rapid drying of the growth medium, such as a non-woven fabric, pad or foam mat, unless the green roof is certified not to need regular irrigation to maintain live plants, and (g) a vegetation layer, at least eighty percent of which must be covered by live plants such as sedum or equally drought resistant and hardy plant species.

§ 499-bbb. Real property tax abatement. An eligible building shall receive an abatement of real property taxes as provided in this title and the rules promulgated hereunder.

1. The amount of such tax abatement shall be four dollars and fifty cents per square foot of a green roof pursuant to an approved applica-

tion for tax abatement; provided, however, that the amount of such tax abatement shall not exceed the lesser of (a) one hundred thousand dollars or (b) the tax liability for the eligible building in the tax year in which the tax abatement is taken.

2. Such tax abatement shall commence on July first following the approval of an application for tax abatement by a designated agency, and shall not exceed one year.

3. With respect to any eligible building held in the condominium form of ownership that receive a tax abatement pursuant to this title, such tax abatement benefits shall be apportioned among all of the condominium tax lots within such eligible building.

4. If, as a result of application to the tax commission or a court order or action by the department of finance, the billable assessed



value for the fiscal year in which the tax abatement is taken is reduced after the assessment roll becomes final, the department of finance shall recalculate the abatement so that the abatement granted shall not exceed the annual tax liability as so reduced. The amount equal to the difference between the abatement originally granted and the abatement as so recalculated shall be deducted from any refund otherwise payable or remission otherwise due as a result of such reduction in billable assessed value.

§ 499-ccc. Application for tax abatement. 1. To obtain a tax abatement pursuant to this title, an applicant must file an application for tax abatement, which may be filed on or after January first, two thousand nine, and on or before March fifteenth, two thousand thirteen.

2. Such application shall be filed with a designated agency no later than the March fifteenth before the tax year, beginning July first, for which the tax abatement is sought.

3. Such application shall contain the following:

(a) The name and address of the applicant and the location of the green roof.

(b) Proof that the applicant received all required certifications, permits and other approvals to construct the green roof.

(c) Certifications, in a form prescribed by a designated agency, from an engineer or architect or other certified or licensed professional whom a designated agency designates by rule (i) of eligible roof top space, (ii) that a green roof has been constructed on an eligible building in accordance with this title, the rules promulgated hereunder, and local construction and fire codes, (iii) that a structural analysis of such building has been performed establishing that the building can sustain the load of the green roof in a fully saturated condition, and (iv) pursuant to paragraph (f) of subdivision ten of section four hundred ninety-nine-aaa of this title, if required. All certifications required by this title or the rules hereunder shall set forth the specific findings upon which the certification is based, and shall include information sufficient to identify the eligible building, the certifying engineer, architect or other professional, and such other information as may be prescribed by a designated agency.

(d) An agreement by the applicant, which includes a maintenance plan, to maintain the green roof during the compliance period and for a minimum of three years thereafter in such a manner that it continuously constitutes a green roof within the meaning of this title and the rules promulgated hereunder.

(e) An agreement to permit a designated agency or its designee to inspect the green roof and any related structures and equipment upon reasonable notice.

(f) Any other information or certifications required by a designated agency pursuant to this title and the rules promulgated hereunder.

4. An application for tax abatement shall be in any format prescribed by a designated agency, including electronic form.

5. An application for tax abatement shall be approved by a designated agency upon determining that the applicant has submitted proof acceptable to such agency that the requirements for obtaining a tax abatement pursuant to this title and the rules promulgated hereunder have been met. The burden of proof shall be on the applicant to show by clear and convincing evidence that the requirements for granting a tax abatement have been satisfied.

6. Upon notification from a designated agency that an application for tax abatement has been approved, the department of finance shall apply

the tax abatement, provided there are no outstanding real estate taxes, water and sewer charges, payments in lieu of taxes or other municipal charges with respect to the eligible building.

§ 499-ddd. Continuing requirements. The tax abatement shall be conditioned upon:

1. continuing compliance during the compliance period with all applicable provisions of law, including without limitation the local construction and fire codes, maintaining the green roof in such a manner that it continuously constitutes a green roof within the meaning of this title and the rules promulgated hereunder, and permitting a designated agency or its designee to inspect the green roof and any related structures and equipment upon reasonable notice; and

2. real estate taxes, water and sewer charges, payments in lieu of taxes or other municipal charges with respect to an eligible building not having been due an owing during the compliance period for a period of six months or more.

§ 499-eee. Revocation of tax abatement. 1. The department of finance shall revoke, in whole or in part, any tax abatement granted pursuant to this title whenever a designated agency has determined and notified the department of finance that:

(a) an applicant has failed to comply with a requirement of this title or any rule promulgated hereunder at any time during the compliance period, including without limitation any of the continuing requirements set forth in subdivision one of section four hundred ninety-nine-ddd of this title;

(b) an eligible building has not been in compliance during all or part of the compliance period with any requirement of this title or any rule promulgated hereunder;

(c) the green roof for which a tax abatement was granted has at any time during the compliance period failed to meet any requirement for a green roof pursuant to this title or any rule promulgated hereunder;

(d) the green roof has become a fire or safety hazard at any time during the compliance period; or

(e) an application, certification, report or other document submitted by the applicant contains a false or misleading statement as to a material fact or omits to state any material fact necessary in order to make the statement therein not false or misleading.

2. The department of finance may revoke, in whole or in part, any tax abatement granted pursuant to this title whenever it has determined that an applicant has failed to comply with the continuing requirement set forth in subdivision two of section four hundred ninety-nine-ddd of this title.

3. Where it has been determined by a designated agency, after notice

to and an opportunity to be heard by the entity receiving the tax rebate, that a situation described in any of the provisions of subdivision one of this section has occurred, such designated agency shall so notify the department of finance no later than the ninetieth day after the last day of the compliance period.

4. An applicant shall pay, with interest, such part of any tax abatement received pursuant to this title that represents the period of non-compliance as determined by the designated agency or the department of finance, as the case may be. In addition, a designated agency may declare any applicant ineligible for future tax abatement pursuant to this title if any application, certification, report or other document submitted by the applicant contains a false or misleading statement as

to a material fact or omits to state any material fact necessary in order to make the statement therein not false or misleading.

§ 499-fff. Enforcement and administration. 1. The department of finance shall have, in addition to any other functions, powers and duties that have been or may be conferred on it by law, the following functions, powers and duties to be exercised in accordance with this title:

- (a) to apply a tax abatement;
- (b) to revoke all or part of any such tax abatement;
- (c) to make and promulgate rules to carry out the purposes of this title; and
- (d) any other function, power or duty necessarily implied by this title.

2. A designated agency shall have, in addition to any other functions, powers and duties that have been or may be conferred on it by law, the following functions, powers and duties to be exercised in accordance with this title:

- (a) to receive, review, approve and deny applications for tax abatement;
- (b) to inspect green roofs and any related structures and equipment;
- (c) to prescribe forms and make and promulgate rules to carry out the purposes of this title;
- (d) to make the determinations provided for in sections four hundred ninety-nine-ccc and four hundred ninety-nine-eee of this title and to notify the department of finance of such determinations; and
- (e) any other function, power or duty necessarily implied by this title.

3. If a designated agency determines that an architect or engineer or other certified or licensed professional whom such agency designates by rule, in making any certification under this title or any rule promulgated hereunder, engaged in professional misconduct, then such department shall so inform the education department or other appropriate certifying or licensing authority.

4. A designated agency may provide for reasonable administrative charges or fees necessary to defray expenses of administering the tax abatement program established by this title.

5. A designated agency and the department of finance shall establish procedures that are necessary or appropriate for (a) the timely notification to the department of finance by a designated agency of an approval of an application for tax abatement or of any noncompliance pursuant to section four hundred ninety-nine-eee of this title and (b) any other interagency coordination to facilitate the purposes of this title.

§ 499-ggg. Tax lien and interest. All taxes, with interest, required to be paid retroactively pursuant to this title shall constitute a tax lien as of the date it is determined such taxes and interest are owed. All interest shall be calculated from the date the taxes would have been due but for the tax abatement granted pursuant to this title at the applicable rate or rates of interest imposed generally for non-payment of real property tax with respect to the eligible building for the period in question.

§ 3. Section 6509 of the education law is amended by adding a new subdivision 13 to read as follows:

(13) In the event that any agency designated pursuant to title four-B of article four of the real property tax law (relating to the green roof tax abatement) has reported to the department alleged misconduct by an

architect or engineer in making a certification under such title, the board of regents, upon a hearing and a finding of willful misconduct, may revoke the license of such professional or prescribe such other penalty as it determines to be appropriate.

§ 4. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO

Temporary President of the Senate

SHELDON SILVER

Speaker of the Assembly

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