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**TESTIMONY BEFORE THE JOINT LEGISLATIVE FISCAL COMMITTEES
ON NEW YORK STATE'S 2005-06 EXECUTIVE BUDGET ON HOUSING**

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Good morning. My name is Ralph Carbone and I am President of Local 1359, Rent Regulation Services Employees, District Council 37, AFSCME, AFL-CIO. I am also a member of the DC37 Housing Committee. I appreciate this opportunity to testify before the New York State Joint Legislative Fiscal Committees concerning the New York State Division of Housing & Community Renewal's 2005-06 budget.

I speak, not only as the President of the Local whose approximately 400 members administer this state's rent regulatory system for the DHCR, but as an attorney who has worked in this field for almost 23 years and is therefore fully familiar with the operational needs of the agency and the public it serves.

Prior to beginning my remarks, I wish to note that my members who are employed by the Division of Housing have been awaiting the release, introduction and passage of a pay bill since we concluded a successor contractual agreement with the Governor's Office of Employee Relations (GOER) in August, 2004, approximately six months ago. As a result, they have gone a substantial period of time without receiving the salary increases already obtained by the other executive branch state employees who have resolved their contracts. The Governor's office has recently released the Rent Regulation Services Negotiating Unit pay bill. I am respectfully requesting your assistance in the prompt introduction and passage of this legislation so that my members can receive the salary increases to which they are entitled and for which they have long waited.

The proposed state budget for 2005-06 reflects reductions in several important programs and the continuation of a hiring freeze to close a projected \$4.15 billion deficit. I note that the agency's 2005-06 budget is similarly affected. For example, companies participating in both the Neighborhood Preservation Program and the Rural Preservation Program, which do so much to provide and/or maintain affordable housing for some of our neediest citizens, are suffering a devastating funding crisis (continued from this fiscal year as the legislature's restoration of a 50% funding cut was vetoed by the Governor) that may drive many of them out of business. It is extremely troubling that in a budget of more than \$105 billion,

several million dollars cannot be spared to properly fund these programs, if only at their 2003-04 levels. The legislature should restore adequate funding for our vitally needed NPC's and RPC's. In addition, for greater efficiency and/or to provide more comprehensive community services, those companies should be permitted to merge and to service more than one neighborhood in more than one municipality without suffering any loss of funding. Indeed, the maximum annual contract award should be increased to \$150,000 per company except for those that merge. Those companies should be able to receive a higher maximum in increments of \$150,000 depending upon the number of companies that consolidate.

It is of great concern to me that the concept of affordable housing is seemingly losing import in this state. The last several State of the State addresses have barely touched on housing issues. This, as the National Low Income Housing Coalition has ranked New York the fifth least affordable state in the nation for low income workers. I've already spoken about the cuts to the NPC's and RPC's. Worse, is how the Mitchell-Lama and rent regulated housing stock continues to inexorably decrease and how little new housing for low, working and middle class families is being created at the state level. I note as an aside, that under "Housing Capital Programs" (page 189 of the budget) the state would always note the number of new housing units that would be constructed through appropriations to the Housing Trust Fund and the Affordable Housing Corporation. For example, in 2004-05 the state estimated 1,900 new housing units would be created. In this budget, the state makes no estimate of the number of new housing units to be created next fiscal year. Is this a simple omission? Or is it symptomatic of a larger problem? Perhaps it's something for all of us to consider.

Executive budget recommendations for 2005-06 provide no additional support for the Low Income Housing Tax Credit program discouraging additional private investment in affordable housing for New Yorkers earning below a particular community's median income. Support for repairs and renovations to the state's existing public housing stock, at \$12.8 million, has remained static for the past several fiscal years despite a 1990 state survey (the latest available) that indicated (that as of that time) that \$343 million was required to adequately service this vitally needed housing (see New York state's 2005 action plan, page 96: \$175 million allocated to date for \$343 million in repairs/renovations). In fact, the budget contains a further 9% reduction in periodic subsidies in aid to localities, which is on top of a similar 9% reduction in the current fiscal year. Because the affordable housing crisis is so acute in this state, the legislature should assure that adequate capital funds and aid to localities are available to promote the creation of new housing and the rehabilitation and maintenance of existing housing.

Just as seriously, I note the continued reduction in the number of employees in the Office of Rent Administration (ORA). While budgetary personnel figures appear static between this and the next fiscal years, the fact is that ORA employees are rarely replaced. Some are even "flexed" into non ORA positions despite the fact that the city of New York, in effect, pays the salaries of most of these employees through assessment of costs legislation enacted several years ago. The result is that ORA,

which oversees over one million housing units affecting several million people, rarely enhances and generally reduces services to the public it serves. With fewer and fewer inspectors, examiners, public information specialists, enforcement and compliance attorneys and necessary staff, the agency is less aggressive in enforcing its oversight responsibilities to the detriment of the public. For example, one agency attorney was compelled to complain to the state inspector general - and another had to threaten to do so - because the agency had either refused, or sat-on, issuing appropriate subpoenas to obtain relevant evidence in instances where owner fraud was strongly suspected in the setting of legal rents. The legislature should insist that staffing levels for ORA be maintained at the numbers listed in the budget statement including replacing those who separate from state service on a one-for-one basis. They should also consider investigating whether the manner in which the agency exercises its oversight responsibilities should be changed or modified to enhance performance.

The budget statement also indicates that, under rent stabilization and control, the agency recognizes the concerns of "both landlords and tenants" (at page 188). While it is vitally important to administer the system of rent regulation fairly, it seems that the agency has been anything but when it comes to administering the Emergency Tenant Protection Act. For example, the agency's recent enactment of its "electrical exclusion" policy results in tenants losing the service of having electricity paid by the owner without adequate compensation. Greater energy conservation, the basis for the change, is an important public policy consideration, but it should be revenue neutral. Here, among other things, owners are permitted to retain prior rental electrical inclusion allowances (of approximately 6%) and obtain a major capital improvement rent increase as incentives for being relieved of the burden and cost of paying for tenants' electric bills. As a result, the concomitant rent reduction that the tenants receive does not compensate for the loss of electric service. The long standing, time-honored prior policy which fairly apportioned costs so that neither owner nor tenants profited should have been retained. Moreover, the agency has taken the position that an owner may dishonor or discontinue receiving a "Section 8" rental housing subsidy from a regulated tenant compelling that tenant to pay the full amount of the rent (often an impossibility or the subsidy would not be needed) even if that subsidy was a part of the tenant's original lease agreement. The agency could have easily interpreted the regulations to require an owner to continue to accept the subsidy under the "same terms and conditions" section of the rent laws as a number of courts have ruled. Instead, the policy chosen is one that results in the probable eviction of the poorest or neediest tenants. And, in many instances, this occurs in rapidly gentrifying areas where such tenants are no longer wanted or desired by owners to be a part of their "building mix." In addition, the agency is currently considering enacting a policy whereby, upon a second tenant succession to become an apartment leaseholder, an owner may demand access to perform interior improvements that the tenant has neither requested nor desires but would be required to pay for by increasing the unit's rent by one-fortieth of the total cost. To permit an owner unbridled access (presumably under pain of eviction) to perform an unwanted or an unneeded renovation at the tenant's ultimate expense is not only wrong but wrong-headed.

Because of the state's fiscal crises, and the fact that the creation of new affordable housing far lags demand, it is of utmost importance to preserve the affordable housing we currently have, rather than promote policies (or permit the continuation of existing policies) which removes such units from the reach of low, moderate and middle income residents.

The 220 Mitchell-Lama developments and the 92,000 units of affordable housing they contain (approximately 70,000 of which are in New York City) must be protected. Therefore the legislature is urged to enact legislation, supported by the mayor of New York City, to place under rent stabilization any development that chooses to "buy-out" of the program regardless of the year the complex was built (if such complex is in a county covered by the Emergency Tenant Protection Act).

More affordable housing has been lost due to the "luxury deregulation" provisions of the rent laws than any amount built since the advent of these regulations. Estimates range as high as 168,000 units lost since 1991 (see, e.g. The End of Rent Regulation by Barbara Katz). To preserve the largest bloc of affordable housing in the state, the legislature is urged to repeal the luxury deregulation provisions of the rent laws.

Finally, the legislature should repeal the Urstadt Law which requires the City of New York to obtain the approval of the Commissioner of DHCR to impose more stringent rent regulations (see, e.g. 65 McKinney's, section 8605). Since current law only permits the city to ease regulations, it is unable to effectively respond to the crises in affordable housing by changing and/or expanding classes of housing covered under the law or by establishing fair rents and rental increases. The legislature should recognize that by permitting local autonomy they will remove the need for state governmental and legislative involvement through micro-management as well as provide for appropriate home rule.

I hope that the legislature will respond positively to the concerns expressed in my testimony.

Thank you.