

STATE OF NEW YORK

2149

2021-2022 Regular Sessions

IN ASSEMBLY

January 14, 2021

Introduced by M. of A. JEAN-PIERRE -- read once and referred to the
Committee on Local Governments

AN ACT to amend the town law, in relation to authorizing local municipalities to establish tourism recovery improvement districts

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

1 Section 1. The town law is amended by adding a new section 190-h to
2 read as follows:

3 § 190-h. Tourism recovery improvement districts. 1. For the purposes
4 of this section, the following terms shall have the following meanings:

5 (a) "Assessment" means a levy imposed on behalf of the district on a
6 business as provided in the district plan.

7 (b) "Benefited business" means businesses located within a district,
8 which benefit from district improvements based on a rational nexus test.
9 Districts may include one or more types of businesses. Businesses need
10 not profit equally to be considered to have benefited. Assessed busi-
11 nesses located in a tourism recovery improvement district are not
12 required to be contiguous.

13 (c) "Business assessment" means any assessment made pursuant to this
14 section upon a business.

15 (d) "Business owner" means any person recognized by a municipality as
16 the owner of the business.

17 (e) "District" means a tourism improvement district established pursu-
18 ant to this section, which may include an entire county or multiple
19 counties provided that a district may not overlap in whole or in part
20 with a city with a population of one million or more.

21 (f) "District management association" means the association estab-
22 lished pursuant to subdivision twelve of this section.

23 (g) "District plan" or "plan" means a proposal as described in subdi-
24 vision two of this section.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (h) "Legislative body" means the local legislative body of a municipi-
2 ality empowered to adopt and amend local laws or ordinances.

3 (i) "Municipality" means a county within the state of New York, except
4 counties located within a city with a population of one million or more.
5 In a district which includes more than one municipality, the municipi-
6 ality in which the district plan is filed shall be the lead municipi-
7 ality of the district. The county which shall serve as the lead municipi-
8 ality may not form a district within the territorial jurisdiction of
9 another county without the consent of the legislative body of that coun-
10 ty.

11 (j) "Rational nexus" means the legal principle which requires that
12 there is a rational benefit which accrues to any business owner assessed
13 for said benefit in a district created pursuant to this section. All
14 designated business owners within a designated district paying an
15 assessment must benefit directly or indirectly from improvements
16 provided by a district management association within the district,
17 provided, however, that designated business owners need not benefit
18 equally.

19 2. This district plan shall contain the following:

20 (a) a map of the district;

21 (b) a description of the boundaries of the district proposed for
22 establishment or extension in a manner sufficient to identify the lands
23 included;

24 (c) the improvements and activities proposed and the appropriate
25 projected cost thereof;

26 (d) the total estimated annual amount proposed to be expended for
27 improvements, activities, maintenance, and operation;

28 (e) the proposed source or sources of financing;

29 (f) the proposed time for implementation and completion of the
30 district plan;

31 (g) any proposed rules and regulations to be applicable to the
32 district;

33 (h) identification of a new or an existing entity, agency, or nonpro-
34 fit corporation, charged with promoting tourism in that region, as the
35 district management association; and

36 (i) any other item or matter required to be incorporated therein by
37 the legislative body.

38 3. Every municipality shall be authorized to adopt a local law,
39 subject to permissive referendum, providing that the provisions of this
40 section shall be applicable to the establishment or extension of
41 districts in the municipality.

42 4. (a) Upon establishment of a district pursuant to the provisions of
43 this section, the legislative body shall have authority to exercise the
44 following powers with respect to such district, subject to the
45 provisions of this section:

46 (i) provide for activities and other additional services required for
47 tourism promotion and enhancement of the district, whether or not in
48 conjunction with improvements authorized by this section;

49 (ii) provide for district improvements which will fund the promotion
50 of tourism activities in the district including, but not limited to, the
51 acquisition, construction, installation, or maintenance of any tangible
52 property with an estimated useful life of five years or more; and

53 (iii) provide for the operation and maintenance of any district
54 improvement.

55 (b) After the establishment of a management district, the legislative
56 body shall not decrease the level of publicly funded tourism promotion

1 services in the management district existing prior to the creation of
2 the district.

3 (c) Assessments levied on businesses pursuant to this section shall be
4 levied on the basis of the estimated benefit to the businesses within
5 the tourism improvement district. The legislative body of the munici-
6 pality may classify businesses for purposes of determining the benefit
7 to the businesses of the improvements and activities provided pursuant
8 to this section. A municipality is authorized to form a district that
9 levies assessments on businesses located in the municipality, including
10 those located in a city, town and village.

11 (d) A municipality shall be authorized to form a district that
12 includes other municipalities.

13 5. The district plan shall be filed with the office of the municipal
14 clerk. The establishment or extension of a district shall be based upon
15 the district plan filed in the office of the municipal clerk. All
16 district plans shall conform with the requirements of this section.

17 6. (a) After the filing of the district plan in the office of the
18 municipal clerk, the legislative body may adopt a resolution and shall
19 enter the same in the minutes of its proceedings. This resolution shall
20 contain a copy of the district plan, the fact that a district plan is on
21 file in the municipal clerk's office for public inspection and the time
22 when and the place where the legislative body will meet and hold a
23 public hearing to hear all persons interested in the subject thereof.

24 (b) The resolution shall also contain a statement that any assessed
25 business owner, deemed benefited and therefore within the district,
26 objecting to the plan shall file an objection at the office of the
27 municipal clerk within thirty days of the conclusion of the hearing on
28 forms made available by the clerk, and, further, that if business owners
29 that shall pay more than fifty percent of the amount raised by the
30 assessed businesses situated within the boundaries of the district
31 proposed for establishment or extension, as shown upon the latest
32 completed municipal business list, file their objections, the district
33 will not be established or extended.

34 (c) The legislative body shall cause a copy of the resolution or a
35 summary thereof to be published at least once in the official paper or a
36 newspaper in general circulation in the municipality, the first publica-
37 tion to be not less than ten nor more than thirty days before the day
38 set for the hearing required by this section. In addition, not less than
39 ten nor more than thirty days before the date set for the hearing, the
40 legislative body shall cause a copy of the resolution or a summary ther-
41 eof to be mailed to each owner of an assessed business within the
42 proposed district at the address shown on the latest municipal business
43 list. If the legislative body publishes or mails a summary of the resol-
44 ution, such summary shall include the business address of the municipal
45 clerk, a statement that copies of the resolution shall be made available
46 free of charge to the public, the improvements, activities, or services
47 proposed, the total estimated annual amount proposed to be expended for
48 improvements, activities, maintenance and operation, and a statement
49 indicating the rights of owners to object pursuant to paragraph (b) of
50 this subdivision.

51 (d) The resolution may further state the place, other than the munici-
52 pals clerk's office, where the district plan may be inspected in advance
53 of the hearing, if the legislative body determines that, in the public
54 interest, any additional place of inspection is necessary or desirable.

1 7. (a) Not earlier than thirty days after the conclusion of the last
2 day of the public hearing held pursuant to subdivision six of this
3 section, the legislative body shall determine:

4 (i) whether the notice of hearing for all hearings required to be held
5 was published and mailed as required by law and is otherwise sufficient;

6 (ii) whether all the assessed businesses within the boundaries of the
7 proposed district or extension will benefit from the establishment or
8 extension of the district; and

9 (iii) whether the establishment or extension of the district is in the
10 public interest.

11 (b) (i) If the legislative body shall determine the establishment or
12 extension of the district is not the public interest pursuant to subpar-
13 agraph (iii) of paragraph (a) of this subdivision, or if the requisite
14 number of owners shall have filed their objections as provided in subdivi-
15 sion six of this section, the legislative body shall adopt a resol-
16 ution disapproving the establishment or extension of the district, stat-
17 ing the reasons for its determination and enter the same in the minutes
18 of its proceedings. Thereafter no plan for the establishment or exten-
19 sion of a district to include any business proposed to be included in
20 the disapproved district may be prepared as provided in subdivision six
21 of this section until the expiration of at least one year from the date
22 of disapproval.

23 (ii) If the legislative body shall find that notice was incorrectly or
24 insufficiently given or that, except as otherwise provided in subdivi-
25 sion two of this section, any assessed business within the boundaries of
26 the proposed district or extension is not benefited thereby or that
27 certain businesses benefited thereby had not been included therein, it
28 shall call a further hearing at a definite place and time not less than
29 ten nor more than thirty days after this determination. In the resol-
30 ution calling such hearing, it shall specify the necessary changes, if
31 any, to the boundaries of the proposed district or extension to be made
32 in order that, except as otherwise provided in subdivision two of this
33 section, all of the businesses and only those businesses as deemed bene-
34 fited shall be included within the boundaries of the proposed district
35 or extension. Benefited businesses located in a district are not
36 required to be contiguous. Notice of the further hearing shall be
37 published and mailed in the manner provided in subdivision six of this
38 section, except that, where boundaries are to be altered, this notice
39 shall also specify the manner in which it is proposed to alter the boun-
40 daries of the proposed district or extension. The further hearing shall
41 be conducted in the same manner as the original hearing.

42 (c) If and when the legislative body shall determine in the affirma-
43 tive all of the questions set forth in paragraph (a) of this subdivi-
44 sion, and provided that the requisite number of owners shall not have
45 objected as provided in subdivision six of this section, it may adopt a
46 local law approving the establishment or extension of the district as
47 the boundaries shall be finally determined and the construction of the
48 improvement or providing of the activity or service in the district.

49 (d) Upon the recommendation of the district management association and
50 after a public hearing, the legislative body may adopt a local law at
51 any time prior to or after the establishment of a district to change the
52 method of assessment as set forth in the plan. Notice of such public
53 hearing and a description of the proposed change shall be given in the
54 manner set forth in subdivision six of this section.

55 8. (a) The municipal clerk shall cause a certified copy of the local
56 law of the legislative body adopted pursuant to the provisions of this

1 section establishing or extending any district, or increasing the maxi-
2 mum total amount proposed to be expended for the improvement, activ-
3 ities, or additional services in any district or extension, or changing
4 the method of assessment, or authorizing the district to incur debt to
5 provide for additional improvements, activities, or services within the
6 district, to be duly recorded in the municipal clerk's office within ten
7 days after such local law becomes effective. When recorded this local
8 law shall be presumptive evidence of the regularity of the proceedings
9 for the establishment or extension of the district, of the proceedings
10 instituted for the construction of any improvement and of all other
11 actions taken in relation to it.

12 (b) Within ten days after the local law becomes effective, the munici-
13 pal clerk shall, in addition to any other filing required by law, cause
14 a copy of the local law or a summary thereof to be published at least
15 once in the official paper or newspaper of general circulation in the
16 municipality.

17 (c) This local law shall be final and conclusive unless a proceeding
18 to review is commenced in accordance with this section. Any person
19 aggrieved by any local law adopted pursuant to this section may seek
20 judicial review of the local law in the manner provided by article
21 seventy-eight of the civil practice law and rules, provided the proceed-
22 ing is commenced within thirty days from the date of the publication of
23 the copy or summary of the local law pursuant to paragraph (b) of this
24 subdivision. No review shall be had unless the petitioner shall give an
25 undertaking approved by the supreme court, or a justice thereof, as to
26 form, amount and sufficiency of sureties, that, in the event of failure
27 to modify the local law he or she will pay to the municipality, all
28 costs and expenses as are incurred by it on account of the proceedings,
29 as shall be determined by the court. In the event that upon this review
30 there shall be any modification by the court of the local law, the court
31 shall direct the modification by judgment which shall be final and
32 conclusive, and the municipal clerk shall cause the judgment to be
33 recorded and filed in the same places and manner as was the local law
34 which was modified.

35 9. (a) At any time after the establishment or extension of a district
36 pursuant to the provisions of this section, the district plan upon which
37 the establishment or extension was based, may, upon the recommendation
38 of the district management association, be amended by the legislative
39 body after compliance with the procedures set forth in this section.

40 (b) Amendments to the district plan which provide for changes to the
41 improvements, activities, or services provided under the district plan
42 may be adopted by the district management association and do not require
43 actions by the legislative body.

44 (c) Amendments to the district plan which provide for changes to the
45 boundaries of the district or any change in the method of assessment
46 upon which the business assessment is based may be adopted by local law
47 of the legislative body, provided that the legislative body of the muni-
48 cipality shall, after a public hearing, determine that it is in the
49 public interest to authorize such changes to the boundaries of the
50 district or changes to the method of assessment. The legislative body
51 shall give notice of the hearing by publication of a notice on the
52 legislative body's website or in at least one newspaper having general
53 circulation in the district specifying the time when and the place where
54 the hearing will be held and stating any changes to the boundaries of
55 the district, or any change in the method of assessment upon which the

1 business assessment is based. The notice shall be published once at
2 least ten days prior to the date specified for the hearing.

3 (d) Amendments to the district plan which provide for the district to
4 incur indebtedness in order to provide for additional improvements or
5 activities, or which provide an increase only in the amount to be
6 expended annually for improvements, activities, services, maintenance
7 and operation, or which provide for an increase in the total maximum
8 amount to be expended for improvements or activities in the district,
9 may be adopted by local law of the legislative body. Adoption of a local
10 law of the legislative body regarding the amendments as provided in this
11 paragraph requires that the legislative body shall, after a public hear-
12 ing, determine that it is in the public interest to authorize the
13 district to incur indebtedness to provide for additional improvements or
14 activities, or to increase only in the amount to be expended annually,
15 or to increase the maximum total amount to be expended for improvements
16 or activities in the district. Notice of the hearing shall be published
17 and mailed in the manner provided in subdivision six of this section.

18 10. (a) The expense incurred in the construction or operation of any
19 improvement, activities, or provision of additional services in a
20 district pursuant to this section shall be financed in accordance with
21 the district plan upon which the establishment or extension of the
22 district was based. Activities or services for which district business
23 owners are assessed pursuant to the plan shall be in addition to or an
24 enhancement of those provided by the municipality prior to the estab-
25 lishment of the district. The expense and cost apportioned to benefited
26 businesses in accordance with the plan shall be a business assessment
27 upon each benefited business within the district.

28 (b) The business assessment levied upon benefited businesses pursuant
29 to this section shall be imposed as provided in the district plan.

30 (c) Any municipality which has established a district pursuant to this
31 section, may, for the purpose of providing funds for making capital
32 improvements, within a district, issue and sell bonds or other municipal
33 obligations as provided in the local finance law and other applicable
34 laws and statutes. Principal and interest payments on these bonds or
35 other municipal obligations may be made in whole or in part from the
36 proceeds of business assessments imposed upon benefited businesses with-
37 in the district.

38 11. The proceeds of any business assessment imposed pursuant to this
39 section shall be remitted to the district management association by the
40 municipality within sixty days following the collection of assessments
41 from assessed businesses. None of the proceeds collected pursuant to
42 this section shall be used for any purposes other than those set forth
43 in the district plan.

44 12. (a) There shall be a district management association for each
45 district established pursuant to the provisions of this section, which,
46 if a non-profit corporation, shall pursuant to the not-for-profit corpo-
47 ration law have one or more classes or membership, voting or non-voting
48 for the purpose of carrying out such activities as may be prescribed in
49 the plan.

50 (b) The board of directors of the association may include, but shall
51 not be limited to, representatives of business owners within the
52 district.

53 (c) In addition to such other powers as are conferred on it by law,
54 the district management association may make recommendations to the
55 legislative body with respect to any matter involving or relating to the
56 district.

13. Any district established or extended pursuant to the provisions of this section, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be dissolved by resolution of the legislative body of the municipality, if the legislative body of the municipality finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district. It shall notice a hearing on disestablishment pursuant to subdivision six of this section. Each year on the anniversary of formation of the district there shall be a thirty-day window where petitions of the business owners, or business owner representatives, that shall pay more than fifty percent of the total amount raised by all benefited businesses included in the boundaries of the district may petition to dissolve the district. The legislative body shall request and consider the recommendations of the district management association concerning any proposed dissolution, provided that if the association has not submitted recommendations to the legislative body within ninety days after request therefore, the legislative body shall adopt any such proposed dissolution without considering such recommendations. In the event of dissolution, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be spent in accordance with the district plan or shall be refunded to the assessed business owners by applying the same method and basis that was used to calculate the district assessments that were levied.

14. If any provision of this section or the application thereof to any person or circumstance shall be adjudged invalid by any court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any provisions of this section or the application of any part thereof to any other person or circumstance and to this end the provisions of this section are hereby declared to be severable.

§ 2. This act shall take effect immediately.