S T A T E O F N E W Y O R K

3084

2009-2010 Regular Sessions

I N A S S E M B L Y

January 22, 2009

Introduced by M. of A. PHEFFER, WEISENBERG, CANESTRARI, ORTIZ, GABRYSZAK -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, CLARK, DelMONTE, GIANARIS, MAYERSOHN, MILLMAN, SCARBOROUGH, SWEENEY -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, the state finance law and the tax law, in relation to the establishment of the airport community redevelopment enterprise program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The environmental conservation law is amended by adding a new article 48 to read as follows:

ARTICLE 48

AIRPORT COMMUNITY REDEVELOPMENT ENTERPRISE PROGRAM

SECTION 48-0101. LEGISLATIVE FINDINGS AND INTENT.
48-0103. DEFINITIONS.
48-0105. DISTRIBUTION OF FUNDS.
48-0107. COMMUNITY ENRICHMENT FUNCTIONS.
48-0109. AIRPORT CATASTROPHE FUND DISTRIBUTION.

S 48-0101. LEGISLATIVE FINDINGS AND INTENT.

THE LEGISLATURE FINDS THAT AIR TRAVEL, PARTICULARLY TO AND FROM LARGE AIRPORTS, IMPOSES COST ON RESIDENTS AND BUSINESSES IN SURROUNDING AREAS. AIR TRAVEL INHERENTLY CREATES POLLUTION, NOISE, AND TRAFFIC CONGESTION. THEREFORE, IT IS THE INTENT OF THE LEGISLATURE TO HELP ALLEVIATE THE INHERENT PROBLEMS BY CREATING THE AIRPORT COMMUNITY REDEVELOPMENT ENTERPRISE (ACRE) PROGRAM. THIS PROGRAM IS INTENDED TO IMPROVE NEIGHBORHOODS THAT SERVE LARGE VOLUME AIRPORTS AND THAT BEAR THE PROBLEMS CREATED BY THE AIRPORTS.

S 48-0103. DEFINITIONS.

FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:

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

LBD04475-01-9

1. "AIRPORT ZONE" SHALL MEAN THE APPROPRIATE AREA AROUND AN AIRPORT SERVING AT LEAST 1.5 MILLION PASSENGERS PER YEAR, CONSISTING OF ONE PRIMARY TARGETED ZONE AND ONE SECONDARY TARGETED ZONE.

2. "AUXILIARY ORGANIZATION" SHALL MEAN POLICE DEPARTMENTS, FIRE DEPARTMENTS, AMBULANCE SERVICES, AND ANY OTHER ORGANIZATION USED PRIMARILY AS A SERVICE FOR PUBLIC BENEFIT IN TARGETED ZONES.

3. "PRIMARY TARGETED ZONE" SHALL MEAN THAT AREA WITHIN A TEN MILE RADIUS OF AN AIRPORT.

4. "SECONDARY TARGETED ZONE" SHALL MEAN THAT AREA IN A RADIUS OF MORE THAN TEN BUT LESS THAN TWENTY-FIVE MILES OF AN AIRPORT.

S 48-0105. DISTRIBUTION OF FUNDS.

ALL MONEYS IN THE AIRPORT COMMUNITY REDEVELOPMENT ENTERPRISE FUND, AS DEFINED IN SECTION EIGHTY-NINE-H OF THE STATE FINANCE LAW, SHALL BE DISTRIBUTED AS FOLLOWS:

1. TWENTY-FIVE PERCENT OF THE MONIES COLLECTED SHALL BE USED TO SUBSIDIZE AUXILIARY ORGANIZATIONS.

2. FIVE PERCENT OF THE MONIES COLLECTED SHALL BE TRANSFERRED TO THE AIRPORT CATASTROPHE FUND, AS DEFINED IN SECTION EIGHTY-NINE-I OF THE STATE FINANCE LAW.

3. THIRTY-FIVE PERCENT OF THE MONIES COLLECTED SHALL BE USED IN PRIMARY TARGETED ZONES AND THIRTY-FIVE PERCENT OF THE MONIES COLLECTED SHALL BE USED IN SECONDARY TARGETED ZONES.

4. ALL MONIES DISTRIBUTED PURSUANT TO SUBDIVISION THREE OF THIS SECTION SHALL BE DISTRIBUTED EQUALLY AMONG ALL QUALIFYING AIRPORT ZONES.

S 48-0107. COMMUNITY ENRICHMENT FUNCTIONS.

ALL MONIES DISTRIBUTED PURSUANT TO SUBDIVISION THREE OF SECTION 48-0105 OF THIS ARTICLE SHALL BE USED TO ACCOMPLISH THE FOLLOWING TASKS:

1. PROVIDE REAL PROPERTY TAX ABATEMENTS TO PROPERTY OWNERS LOCATED WITHIN TARGETED ZONES.

2. PROVIDE EDUCATIONAL AND TRAINING PROGRAMS TO BENEFIT THE MEMBERS OF COMMUNITIES LOCATED WITHIN TARGETED ZONES.

3. FUND PUBLIC WORKS PROJECTS WITHIN TARGETED ZONES TO ENHANCE THE AESTHETIC BEAUTY OF THE COMMUNITIES WITHIN SUCH ZONES.

S 48-0109. AIRPORT CATASTROPHE FUND DISTRIBUTION.

ALL MONIES DEPOSITED INTO THE AIRPORT CATASTROPHE FUND SHALL BE USED FOR VICTIM COMPENSATION AND REHABILITATION OF AREAS AFFECTED BY AN AIRPORT DISASTER.

S 2. The state finance law is amended by adding two new sections 89-h and 89-i to read as follows:

S 89-H. AIRPORT COMMUNITY REDEVELOPMENT ENTERPRISE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMMISSIONER OF TAXATION AND FINANCE AND THE COMPTROLLER, A SPECIAL FUND TO BE KNOWN AS THE "AIRPORT COMMUNITY REDEVELOPMENT ENTERPRISE FUND".

2. SUCH FUND SHALL CONSIST OF ALL MONEYS RECEIVED BY THE STATE PURSUANT TO SECTION THREE HUNDRED ONE-E OF THE TAX LAW.

3. MONEYS IN THE AIRPORT COMMUNITY REDEVELOPMENT ENTERPRISE FUND SHALL BE KEPT SEPARATE AND APART AND SHALL NOT BE COMMINGLED WITH ANY OTHER MONEYS IN THE CUSTODY OF THE COMPTROLLER.

4. THE MONEYS IN SUCH FUND SHALL BE EXPENDED ONLY FOR THE PURPOSES SPELLED OUT IN ARTICLE FORTY-EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW.

5. IF A CITY RECEIVING MONEY PURSUANT TO ARTICLE FORTY-EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW FAILS TO MEET ITS OBLIGATIONS OR SPENDS SUCH FUNDS IN A MANNER INCONSISTENT WITH THE PROVISIONS SET FORTH IN SUCH ARTICLE, THEN THE COMPTROLLER IS AUTHORIZED TO WITHHOLD ANY ADDITIONAL MONIES TO SUCH CITY.

S 89-I. AIRPORT CATASTROPHE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMMISSIONER OF TAXATION AND FINANCE AND THE COMPTROLLER, A SPECIAL FUND TO BE KNOWN AS THE "AIRPORT CATASTROPHE FUND".

2. SUCH FUND SHALL CONSIST OF ALL MONEYS TRANSFERRED BY THE STATE PURSUANT TO SUBDIVISION TWO OF SECTION 48-0105 OF THE ENVIRONMENTAL CONSERVATION LAW.

3. MONEYS IN THE AIRPORT CATASTROPHE FUND SHALL BE KEPT SEPARATE AND APART AND SHALL NOT BE COMMINGLED WITH ANY OTHER MONEYS IN THE CUSTODY OF THE COMPTROLLER.

4. THE MONEYS IN SUCH FUND SHALL BE EXPENDED ONLY FOR THE PURPOSES SPELLED OUT IN SECTION 48-0109 OF THE ENVIRONMENTAL CONSERVATION LAW.

S 3. Subdivision (b) of section 312 of the tax law, as amended by section 8 of part EE of chapter 63 of the laws of 2000, is amended to read as follows:

(b) Of all of the taxes collected or received by the commissioner on or before March thirty-first, nineteen hundred ninety-one under the taxes imposed by sections three hundred one-a and three hundred one-e of this article, and all interest and penalties relating thereto, eighty-seven and five-hundredths percent of such collections shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter and the balance thereof shall be deposited in the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account and the public transportation systems operating assistance account thereof in the manner provided by subdivision eleven of section one hundred eighty-two-a of this chapter. Of all taxes, interest and penalties collected or received after March thirty-first, nineteen hundred ninety-one, and before April first, nineteen hundred ninety-three, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, initially thirty-five percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a. The balance thereof shall then be disposed of as follows: seventy-two and seven-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a and twenty-seven and three-tenths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received after March thirty-first, nineteen hundred ninety-three, and before April first, nineteen hundred ninety-four AND BEFORE SEPTEMBER FIRST, NINETEEN HUNDRED NINETY-FOUR, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially fifty-four percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this [chapter] ARTICLE, (ii) twenty-eight and three-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) seventeen and seven-tenths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Provided, however, that, prior to such deposit, from the amounts so collected or received during the period commencing on January first, nineteen hundred ninety-four and ending on March thirty-first, nineteen hundred ninety-four, an amount equal to the portion of the taxes, interest and penalties so received or collected resulting from the amendments made by sections forty-two, forty-three and forty-four of chapter fifty-seven of the laws of nineteen hundred ninety-three shall be deposited and disposed of pursuant to the provisions of subdi-

vision one of section one hundred seventy-one-a of this chapter. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after April first, nineteen hundred ninety-four, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially fifty-four percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) twenty-eight and three-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund, (iii) seven and nine hundred sixty-five thousandths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner and (iv) nine and seven hundred thirty-five thousandths percent shall be deposited in the revenue accumulation fund. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after September first, nineteen hundred ninety-four and before September first, nineteen hundred ninety-five, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially fifty-nine percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) twenty-two and four-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund, (iii) eight and three hundred seventy thousandths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner and (iv) ten and two hundred thirty thousandths percent shall be deposited in the revenue accumulation fund. Except as otherwise provided, of all taxes, interest and penalties, collected or received on or after September first, nineteen hundred ninety-five and before April first, nineteen hundred ninety-six from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-two and eight-tenths percent shall be deposited as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) eighteen percent shall be deposited and disposed of pursuant to section one hundred seventy-one-a of this chapter in the general fund, (iii) eight and six hundred forty thousandths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner and (iv) ten and five hundred sixty thousandths percent shall be deposited in the revenue accumulation fund. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after April first, nineteen hundred ninety-six, and before January first, nineteen hundred ninety-seven from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-three and three-tenths percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) seventeen and four-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) nineteen and three-tenths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after January first, nineteen hundred ninety-seven and before January first, nineteen hundred ninety-eight from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-six and two-tenths percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) fourteen and one-half percent shall be deposited and disposed of pursuant to such section one

hundred seventy-one-a of this chapter in the general fund and (iii) nineteen and three-tenths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after January first, nineteen hundred ninety-eight and before April first, nineteen hundred ninety-nine from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-eight and one-tenth percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) twelve and four-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) nineteen and one-half percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after April first, nineteen hundred ninety-nine AND BEFORE APRIL FIRST, TWO THOUSAND NINE, from the taxes imposed by sections three hundred one-a and three hundred one-e of this article, (i) initially sixty-nine and eight-tenths percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article, (ii) ten and seven-tenths percent shall be deposited and disposed of pursuant to such section one hundred seventy-one-a of this chapter in the general fund and (iii) nineteen and one-half percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner. Except as otherwise provided, of all taxes, interest and penalties collected or received on or after April first, two thousand one, from the taxes imposed by [sections] SECTION three hundred one-a [and three hundred one-e] of this article, (i) initially eighty and three-tenths percent shall be deposited, as prescribed by subdivision (d) of section three hundred one-j of this article and (ii) nineteen and seven-tenths percent shall be deposited in such mass transportation operating assistance fund as prescribed in the aforestated manner.

Provided, further, that on or before the twenty-fifth day of each month commencing with October, nineteen hundred ninety and terminating with the month of March, two thousand one, the comptroller shall deduct the amount of six hundred twenty-five thousand dollars prior to any deposit or disposition of the taxes, interest and penalties collected or received pursuant to such sections three hundred one-a and three hundred one-e and shall pay such amount to the state treasury to the credit of the general fund. Provided, further that on or before the twenty-fifth day of each month commencing with April, two thousand one, the comptroller shall deduct the amount of six hundred twenty-five thousand dollars prior to any deposit or disposition of the taxes, interest, and penalties collected or received pursuant to such [sections] SECTION three hundred one-a [and three hundred one-e] and shall deposit such amount in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this article. Provided, further, that commencing January fifteenth, nineteen hundred ninety-one, and on or before the tenth day of March and the fifteenth day of June and September of such year, the commissioner shall, based on information supplied by taxpayers and other appropriate sources, estimate the amount of the utility credit authorized by section three hundred one-d of this article which has been accrued to reduce tax liability under section one hundred eighty-six-a of this chapter during the period covered by such estimate and certify to the state comptroller such estimated amount. The comp-

troller shall forthwith, after receiving such certificate, deduct the amount of such credit so certified by the commissioner prior to any deposit or disposition of the taxes, interest and penalties collected or received pursuant to such sections three hundred one-a and three hundred one-e and shall pay such amount so certified and deducted into the state treasury to the credit of the general fund. As soon as practicable after April first, nineteen hundred ninety-one, nineteen hundred ninety-two and nineteen hundred ninety-three, but before June fifteenth of each such year, the commissioner shall determine the amount of the utility tax credit which has been actually used to reduce tax liability under such section one hundred eighty-six-a and shall certify the difference between such actual amount and the earlier estimated amount. Also, subsequently, during the fiscal year when the commissioner becomes aware of changes or modifications with respect to actual credit usage, the commissioner shall, as soon as practicable, issue a certification setting forth the amount of any required adjustment to the amount of actual credit usage previously certified. After receiving the certificate of the commissioner with respect to actual credit usage or modification of the same, the comptroller shall forthwith adjust general fund receipts and the revenues to be deposited or disposed of under this article to reflect the difference so certified by the commissioner. The commissioner shall not be liable for any overestimate or underestimate of the amount of the utility credit which has been accrued to reduce tax liability under such section one hundred eighty-six-a. Nor shall the commissioner be liable for any inaccuracy in any certificate with respect to the amount of such credit actually used or any required adjustment with respect to actual credit usage, but the commissioner shall as soon as practicable after discovery of any error adjust the next certification under this section to reflect any such error.

On or before July thirty-first, nineteen hundred ninety-two and on or before July thirty-first, nineteen hundred ninety-three, the commissioner shall conduct the following reconciliation with respect to the preceding fiscal year: he shall multiply the total of all taxes, penalties and interest, after refunds and reimbursements, which are derived from the motor fuel component, the automotive-type diesel motor fuel component and the aviation gasoline component by twenty fifty-fifths; the total of all taxes, penalties and interest, after refunds and reimbursements, which are derived from the nonautomotive-type diesel motor fuel component (excluding taxes, penalties and interest which are derived from product with respect to which the credit or reimbursement provided by section three hundred one-d OF THIS ARTICLE is taken) by twenty-fiftieths; and all taxes, penalties and interest, after refunds and reimbursements, which are derived from the residual petroleum product component (excluding taxes, penalties and interest which are derived from product with respect to which the credit or reimbursement provided by section three hundred one-d OF THIS ARTICLE is taken) by twenty-fortieths. The products of the foregoing multiplications shall be added together and the resulting sum of such products shall be compared with the total of the amounts initially distributed during such fiscal year with respect to such components (excluding receipts derived from product with respect to which the credit or reimbursement provided by section three hundred one-d OF THIS ARTICLE is taken and excluding any amount which represents a reconciliation adjustment pursuant to this paragraph) pursuant to section one hundred seventy-one-a of this chapter which represented thirty-five percent of the total, after refunds and reimbursements, of all taxes, penalties and interest collected or

received during such fiscal year under sections three hundred one-a and three hundred one-e OF THIS ARTICLE during the months of such fiscal year with respect to such components. The commissioner shall then certify the amount of such difference to the comptroller. If the amounts initially distributed in such fiscal year are greater than the sum of such products, the comptroller shall withhold an amount equal to twenty-seven and three-tenths percent of such difference from the first moneys otherwise payable to the general fund pursuant to this subdivision and shall pay such amount to the mass transportation operating assistance fund to the credit of the metropolitan mass transportation operating assistance account and the public transportation systems operating assistance account thereof in the aforestated manner. If the amounts initially distributed in such fiscal year are less than the sum of such products, the comptroller shall withhold an amount equal to twenty-seven and three-tenths percent of such difference from the first moneys otherwise payable to the mass transportation operating assistance fund pursuant to this subdivision and shall pay such amount to the general fund.

When the commissioner becomes aware of changes or modifications with respect to the distribution of revenue under this article, the commissioner shall, as soon as practicable, issue a certification setting forth the amount of any required adjustment. After receiving the certificate of the commissioner with respect to any adjustments, the comptroller shall forthwith adjust general fund receipts and the revenues to be deposited or disposed of under this article to reflect the difference so certified by the commissioner. The commissioner shall not be liable for any overestimate or underestimate of the amount of the distribution. Nor shall the commissioner be liable for any inaccuracy in any certificate with respect to the amount of the distribution or any required adjustment with respect to the distribution, but the commissioner shall as soon as practicable after discovery of any error adjust the next certification under this section to reflect any such error.

Prior to making deposits as provided in this subdivision, the comptroller shall retain such amount as the commissioner may determine to be necessary, subject to the approval of the director of the budget, for reasonable costs of the department in administering and collecting the taxes deposited pursuant to this subdivision and for refunds and reimbursements with respect to such taxes, out of which the comptroller shall pay any refunds or reimbursements of such taxes to which taxpayers shall be entitled.

S 4. This act shall take effect immediately and shall apply to any taxes imposed on or after April 1, 2009.