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

2862

2009-2010 Regular Sessions

I N  S E N A T E

March 4, 2009

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the New York state urban development corporation act, in relation to establishing the empire revolving bridge loan fund, and authorizing the New York state urban development corporation to issue bonds or notes to provide monies for such fund; and to amend chapter 393 of the laws of 1994, amending the New York state urban development corporation act relating to the powers of the New York state urban development corporation to make loans, in relation to the effectiveness thereof

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

Section 1. Section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, is amended by adding a new section 16-t to read as follows:

S 16-T. EMPIRE REVOLVING BRIDGE LOAN FUND. 1. IT IS HEREBY DECLARED THAT IT IS A VITAL POLICY AND PUBLIC PURPOSE OF NEW YORK STATE TO PROMOTE SIGNIFICANT ECONOMIC DEVELOPMENT IN NEW YORK. THE HISTORY OF NEW YORK IS MARKED BY LARGE-SCALE ECONOMIC ENDEAVORS WHICH HARNESSED THE CREATIVITY, SKILL AND VISION OF THE RESIDENTS OF NEW YORK. THE TRANSFORMING POWER OF THESE ACCOMPLISHMENTS IS BEST EMBODIED IN THE ERIE CANAL, WHICH CREATED IN ITS WAKE A SURGE OF ECONOMIC AND POPULATION GROWTH IN NEW YORK. IN CONTRAST, THE LEGISLATURE HEREBY FINDS THAT THE CURRENT ECONOMIC CLIMATE OF NEW YORK AS A WHOLE IS MARKED BY PERSISTENT DISINVESTMENT, BLIGHT AND AGING INFRASTRUCTURE, LOSS OF OPEN SPACE, AND EMIGRATION OF EMPLOYMENT OPPORTUNITIES AND INVESTMENT DOLLARS, AND THAT RECREATING THE ENVIRONMENT OF ENERGY AND RISK-TAKING THAT DROVE THE ERIE CANAL IS ESSENTIAL TO NEW YORK'S FUTURE WELL-BEING. THE LEGISLATURE FINDS THAT IN ORDER TO REVERSE THE TRENDS OF DECLINE, IT IS NECESSARY AND APPROPRIATE TO ESTABLISH A PUBLIC/PRIVATE FINANCING MODEL TO PROMOTE

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

LBD07175-01-9

ECONOMIC DEVELOPMENT IN NEW YORK WHILE MAXIMIZING LEVERAGE NEEDED TO ASSIST IN FINANCING SUCH PROJECTS AND DO SO IN AN EXPEDITED MANNER. THE LEGISLATURE HEREBY FINDS THAT CURRENT CONDITIONS IN CREDIT MARKETS HAVE HAD A NEGATIVE EFFECT ON SIGNIFICANT ECONOMIC DEVELOPMENT PROJECTS IN NEW YORK. IT IS THE OVERRIDING PUBLIC POLICY OF THIS STATE TO CREATE A VEHICLE TO PROVIDE SHORT-TERM FINANCING FOR IMPORTANT PROJECTS IN NEW YORK TO ENSURE THE HEALTH, WELFARE AND PROSPERITY OF ALL CITIZENS OF THE STATE.

2. THERE IS HEREBY ESTABLISHED IN THE CUSTODY OF THE CORPORATION A SPECIAL FUND TO BE KNOWN AS THE "EMPIRE REVOLVING BRIDGE LOAN FUND".

3. THE FUND SHALL CONSIST OF THE NET PROCEEDS OF ONE OR MORE SERIES OF BONDS OR NOTES ISSUED, AT ANY TIME AND FROM TIME TO TIME, BY THE CORPORATION PURSUANT TO ARTICLE 5-C OF THE STATE FINANCE LAW AND SUBDIVISION NINE OF THIS SECTION FOR THE PURPOSES OF THIS SECTION, ALL MONIES TRANSFERRED TO SUCH FUND PURSUANT TO LAW, ALL MONEYS DONATED TO IT, PAYMENTS OF PRINCIPAL ON LOANS MADE FROM THE FUND, AND ANY INTEREST EARNINGS WHICH MAY ACCRUE FROM THE INVESTMENT OR REINVESTMENT OF MONEYS FROM THE FUND. THE MONIES HELD IN OR CREDITED TO THE FUND SHALL BE EXPENDED SOLELY FOR THE PURPOSES SET FORTH IN THIS SECTION. THE CORPORATION SHALL NOT COMMINGLE THE MONIES OF SUCH FUND WITH ANY OTHER MONIES OF THE CORPORATION OR ANY MONIES HELD IN TRUST BY THE CORPORATION.

4. MONIES OF THE FUND, WHEN ALLOCATED, SHALL BE AVAILABLE TO THE CORPORATION TO MAKE LOANS TO ELIGIBLE PROJECTS AS PROVIDED IN THIS SECTION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE ACCOMPANYING MEANINGS:

(A) "APPLICANT" SHALL MEAN THAT INDIVIDUAL OR ENTITY, OR SUCH INDIVIDUAL OR ENTITY'S AGENT, SUCCESSOR IN INTEREST, ASSIGNEE OR DESIGNEE, WHICH FILES AN APPLICATION WITH THE CORPORATION FOR CONSIDERATION OF AN ELIGIBLE PROJECT.

(B) "BROWNFIELD SITE" SHALL HAVE THE MEANING SET FORTH IN SECTION 27-1405 OF THE ENVIRONMENTAL CONSERVATION LAW.

(C) "ELIGIBLE PROJECT" SHALL MEAN ANY NEW EQUIPMENT, IMPROVEMENT OR STRUCTURE, INCLUDING NEW CONSTRUCTION, ALTERATION OR IMPROVEMENT TO EXISTING STRUCTURES, AND ALL REAL AND PERSONAL PROPERTY DEEMED NECESSARY THEREWITH, WHICH IS PROJECTED TO (I) COST A MINIMUM OF TWENTY MILLION DOLLARS, (II) RESULT IN THE CREATION, IN ONE OR MORE PHASES, OF AT LEAST THREE HUNDRED NEW FULL TIME EQUIVALENT JOBS AT THE PROJECT SITE, AND (III) ONE OR MORE OF THE FOLLOWING: (A) WILL BE DESIGNED AND CONSTRUCTED TO ACHIEVE "GOLD" STATUS OR HIGHER PURSUANT TO THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN ("LEED") GREEN BUILDING RATING SYSTEM CRITERIA DEVELOPED BY THE UNITED STATES GREEN BUILDING COUNCIL OR (B) WILL BE DESIGNED AND CONSTRUCTED TO ACHIEVE "3 GLOBES" OR HIGHER PURSUANT TO THE GREEN GLOBES RATING SYSTEM DEVELOPED BY THE GREEN BUILDING INITIATIVE; OR (C) WILL UTILIZE TECHNOLOGY-ENABLED DESIGN, CONSTRUCTION AND COOPERATION INCLUDING, BUT NOT LIMITED TO, GENERALLY ACCEPTED UNIVERSAL DESIGN PRINCIPLES THAT ENHANCE THE FULL CYCLE USE OF BUILDINGS WITHOUT REGARD TO THE PHYSICAL ABILITIES OR DISABILITIES OF OCCUPANTS OR GUESTS IN ORDER TO ACCOMMODATE A WIDE RANGE OF INDIVIDUAL PREFERENCES AND FUNCTIONAL ABILITIES. IF A PHASE OF THE ELIGIBLE PROJECT IS UNDER CONSTRUCTION AS OF THE DATE OF THE APPLICATION, THEN ANY JOBS CREATED AS OF SUCH DATE SHALL BE CONSIDERED JOBS CREATED FOR PURPOSES OF THIS DEFINITION.

THE CORPORATION SHALL GIVE PREFERENCE TO THOSE ELIGIBLE PROJECTS WHICH MEET EITHER OR BOTH OF THE FOLLOWING CRITERIA: (I) THE SITE IS LOCATED IN AN AREA OF A MUNICIPALITY OR REGION CHARACTERIZED BY HIGH UNEMPLOYMENT, A HIGH POVERTY RATE AND/OR A HIGH COMMERCIAL VACANCY RATE; OR (II)

THE APPLICANT'S PROPOSED ELIGIBLE PROJECT WILL BE LOCATED, IN WHOLE OR IN PART, ON A BROWNFIELD SITE AS DEFINED IN THIS SECTION.

(D) "ELIGIBLE PURPOSES" SHALL MEAN, NOTWITHSTANDING ARTICLE 5-B OF THE STATE FINANCE LAW, ALL COSTS PAID OR INCURRED IN CONNECTION WITH THE DESIGN AND CONSTRUCTION OF AN ELIGIBLE PROJECT, INCLUDING, WITHOUT LIMITATION, THE COSTS OF LAND AND OTHER INTERESTS, BUILDINGS, FIXTURES, FURNITURE, EQUIPMENT OR MACHINERY, RESEARCH AND DEVELOPMENT, PERMITTING, PLANNING, ENGINEERING, FINANCING, REFINANCING, THE PROVISION OF WORKING CAPITAL, INVENTORY, MARKETING, EXPENDITURES ASSOCIATED WITH THE OPENING OF AN ELIGIBLE PROJECT, AND/OR OTHER AMOUNTS, INCLUDING RESERVES AND INTEREST, REQUIRED TO BE PAID IN CONNECTION WITH FINANCING OR REFINANCING OF THE ELIGIBLE PROJECT.

(E) "FUND" MEANS THE EMPIRE REVOLVING BRIDGE LOAN FUND ESTABLISHED BY THIS SECTION.

(F) "SPONSOR" SHALL MEAN THE INDIVIDUAL OR ENTITY OR SUCH INDIVIDUAL OR ENTITY'S AGENT, ASSIGNEE, DESIGNEE OR SUCCESSOR IN INTEREST WHOSE APPLICATION FOR TREATMENT AS AN ELIGIBLE PROJECT HAS BEEN APPROVED BY THE CORPORATION.

5. EVERY APPLICATION SHALL BE IN A FORM ACCEPTABLE TO THE CORPORATION. THE APPLICANT SHALL PAY, UPON SUBMISSION OF THE APPLICATION, A FEE OF ONE THOUSAND DOLLARS. THE CORPORATION SHALL APPROVE OR DISAPPROVE, IN WHOLE OR IN PART, THE REQUESTED LOAN FOR THE ELIGIBLE PROJECT NO LATER THAN THIRTY DAYS FROM THE DATE OF THE RECEIPT OF THE APPLICATION OR AT THE NEXT BOARD MEETING OCCURRING WITHIN SIXTY DAYS OF THE DATE OF THE RECEIPT OF THE APPLICATION IF SUCH MEETING IS SCHEDULED FOR A DATE LATER THAN THIRTY DAYS FROM THE DATE OF RECEIPT OF SUCH APPLICATION. IN CONSIDERING THE APPLICATION, THE CORPORATION SHALL CONSIDER FACTORS AFFECTING THE CREDITWORTHINESS OF THE APPLICANT INCLUDING, BUT NOT LIMITED TO, THE APPLICANT'S BUSINESS PLAN, BUSINESS EXPERIENCE AND MANAGEMENT INFORMATION, CREDIT HISTORY AND FINANCIAL STATEMENTS, SUFFICIENCY OF COLLATERAL TO SECURE REPAYMENT OF THE LOAN, OTHER PERSONAL AND CORPORATE GUARANTEES ON THE PROJECT, CASH FLOW PROJECTIONS, AND THE STRUCTURE AND TIMING OF ANY PROPOSED LONG-TERM FINANCING BY THE APPLICANT, INCLUDING ANY FINANCING PURSUANT TO THE SELF-SUFFICIENCY PROGRAM IN SECTION 16-U OF THIS CHAPTER. TO THE EXTENT PERMITTED BY LAW, ALL INFORMATION REGARDING THE FINANCIAL CONDITION, MARKETING PLANS, MANUFACTURING PROCESSES, PRODUCTION COSTS, CUSTOMER LISTS, OR OTHER TRADE SECRETS OR PROPRIETARY INFORMATION DEEMED AS SUCH BY THE APPLICANT IN CONNECTION WITH THE APPLICATION SUBMITTED PURSUANT TO THIS SECTION, SHALL BE CONFIDENTIAL AND EXEMPT FROM PUBLIC DISCLOSURE.

6. (A) THE FUNDS OF THE CORPORATION DERIVED PURSUANT TO THIS SECTION MAY BE USED TO PROVIDE LOANS TO ELIGIBLE PROJECTS FOR ELIGIBLE PURPOSES. THE INTEREST RATE ON ANY SUCH LOAN FOR THE TERM OF SUCH LOAN SHALL BE NOT MORE THAN THE ALL-IN TRUE INTEREST COST TO THE CORPORATION, AS DETERMINED BY THE CORPORATION, FOR THE BONDS ISSUED PURSUANT TO SUBDIVISION NINE OF THIS SECTION. THE TERM OF ANY LOAN MADE PURSUANT TO THIS SECTION SHALL NOT EXCEED THREE YEARS. ALL LOANS SHALL BE SECURED BY A LIEN POSITION ON COLLATERAL AT THE HIGHEST LEVEL OF PRIORITY THAT CAN ACCOMMODATE THE BORROWER'S ABILITY TO RAISE SUFFICIENT DEBT AND EQUITY CAPITAL FOR THE PROJECT.

(B) THE SPONSOR, UPON NOTICE TO THE CORPORATION WITHIN THIRTY DAYS OF THE EXPIRATION OF THE TERM OF THE LOAN, MAY EXTEND AT ITS OPTION THE LOAN FOR A ONE-YEAR PERIOD IF THE SPONSOR IS IN COMPLIANCE WITH THE TERMS OF THE LOAN. THE SPONSOR SHALL BE LIMITED TO THREE ONE-YEAR EXTENSIONS. ANY SUCH EXTENSION SHALL CONTINUE TO BE SECURED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION, AND THE INTER-

EST RATE ON SUCH EXTENSION SHALL BE CALCULATED IN THE SAME WAY AS THE ORIGINAL LOAN.

(C) THE CORPORATION SHALL, UPON THE REQUEST OF THE SPONSOR, ESTABLISH A SPECIAL ACCOUNT FOR SUCH SPONSOR WITHIN THE FUND. SUCH ACCOUNT SHALL CONSIST OF THAT PORTION, AS REQUESTED BY THE SPONSOR, OF ANY PROCEEDS OF BONDS ISSUED PURSUANT TO SUBDIVISION THREE OF THIS SECTION, ALL PAYMENTS OF PRINCIPAL ON LOANS MADE FROM THE FUND OR SPECIAL ACCOUNT BY THE APPLICABLE SPONSOR, AND ANY INTEREST EARNINGS THAT MAY ACCRUE FROM THE INVESTMENT OR REINVESTMENT OF MONEYS FROM THE SPECIAL ACCOUNT. NOTWITHSTANDING PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION, THE CORPORATION SHALL PROVIDE ONE-YEAR EXTENSIONS ON THE ORIGINAL LOAN TO THE APPLICABLE SPONSOR, PROVIDED THAT THE SPONSOR IS IN COMPLIANCE WITH THE TERMS OF THE LOAN, FROM THE SPECIAL ACCOUNT UNTIL TEN YEARS FROM THE DATE OF COMMENCEMENT OF THE INITIAL LOAN, AT THE INTEREST RATE OF SUCH INITIAL LOAN, PROVIDED THAT SUFFICIENT MONEYS ARE ON DEPOSIT IN SUCH SPECIAL ACCOUNT. ALL LOANS SHALL BE SECURED BY A LIEN POSITION ON COLLATERAL AT THE HIGHEST LEVEL OF PRIORITY THAT CAN ACCOMMODATE THE BORROWER'S ABILITY TO RAISE SUFFICIENT DEBT AND EQUITY CAPITAL FOR THE PROJECT. THE AMOUNTS DEPOSITED IN SUCH SPECIAL ACCOUNT MAY NOT BE INTERCHANGED OR COMMINGLED WITH ANY OTHER ACCOUNT IN THE FUND. ANY REMAINING MONIES IN A SPECIAL ACCOUNT AT THE END OF THE TERM OF THE FINAL LOAN MADE HEREUNDER SHALL BE TRANSFERRED TO THE GENERAL ACCOUNTS OF THE CORPORATION CONSISTENT WITH APPLICABLE LAW.

7. IN CONNECTION WITH THE UNDERTAKING OF AN ELIGIBLE PROJECT BY THE CORPORATION, THE SPONSOR SHALL PAY TO THE CORPORATION, AT THE CLOSING OF EACH LOAN FINANCING BY THE CORPORATION, A CLOSING FEE EQUAL TO THE SPONSOR'S ALLOCABLE SHARE OF THE COSTS OF ISSUANCE OF THE BONDS ISSUED PURSUANT TO SUBDIVISION NINE OF THIS SECTION, PROVIDED HOWEVER THAT SUCH FEE SHALL NOT EXCEED ONE PERCENT OF THE LOAN AMOUNT. THE ALLOCABLE SHARE SHALL BE A RATIO, THE NUMERATOR OF WHICH SHALL BE THE PRINCIPAL AMOUNT OF THE SPONSOR'S LOAN, AND THE DENOMINATOR OF WHICH SHALL BE THE NET PROCEEDS OF BONDS ISSUED PURSUANT TO SUBDIVISION NINE OF THIS SECTION. THE APPLICATION FEE PAID PURSUANT TO SUBDIVISION FIVE OF THIS SECTION SHALL BE CREDITED AGAINST SUCH CLOSING FEE.

8. THE CORPORATION SHALL ANNUALLY REPORT, BEGINNING ON OR BEFORE MARCH 15, 2010 AND ON OR BEFORE EACH SUBSEQUENT MARCH 15, TO THE GOVERNOR, THE CHAIR OF THE SENATE FINANCE COMMITTEE AND THE CHAIR OF THE ASSEMBLY WAYS AND MEANS COMMITTEE, DESCRIBING THE ACTIVITIES AND OPERATION OF THE LOAN PROGRAM AUTHORIZED BY THIS SECTION. SUCH REPORTS SHALL SET FORTH THE NUMBER OF LOAN APPLICATIONS RECEIVED AND APPROVED; THE NAMES OF SPONSORS RECEIVING LOANS TOGETHER WITH THE AMOUNT AND PURPOSE OF THE LOAN AND THE OUTSTANDING BALANCE; THE NUMBER OF JOBS CREATED AND/OR RETAINED; AND THE BALANCE REMAINING IN THE EMPIRE REVOLVING BRIDGE LOAN FUND, ALONG WITH FUND REVENUES AND EXPENDITURES FOR THE PREVIOUS FISCAL YEAR, AND PROJECTED REVENUES AND EXPENDITURES FOR THE CURRENT AND FOLLOWING FISCAL YEARS.

9. PURSUANT TO ARTICLE 5-C OF THE STATE FINANCE LAW, BUT NOTWITHSTANDING ANY PROVISIONS OF LAW TO THE CONTRARY, THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION IS HEREBY AUTHORIZED TO ISSUE BONDS, NOTES AND OTHER OBLIGATIONS IN ONE OR MORE SERIES, AT ANY TIME AND FROM TIME TO TIME, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED THE AMOUNT NECESSARY TO PROVIDE NET PROCEEDS OF NO GREATER THAN FIVE HUNDRED MILLION DOLLARS FOR THE PURPOSE OF ESTABLISHING THE FUND CREATED PURSUANT TO THIS SECTION. THE AGGREGATE AMOUNT OF BONDS, NOTES OR OTHER OBLIGATIONS AUTHORIZED TO BE ISSUED PURSUANT TO THIS SECTION SHALL EXCLUDE BONDS, NOTES OR OTHER OBLIGATIONS ISSUED TO REFUND OR OTHERWISE REPAY BONDS,

NOTES OR OTHER OBLIGATIONS THERETOFORE ISSUED; PROVIDED, HOWEVER, THAT UPON ANY SUCH REFUNDING OR REPAYMENT THE TOTAL AGGREGATE PRINCIPAL AMOUNT OF OUTSTANDING BONDS, NOTES OR OTHER OBLIGATIONS MAY BE GREATER THAN FIVE HUNDRED MILLION DOLLARS, ONLY IF THE PRESENT VALUE OF THE AGGREGATE DEBT SERVICE OF THE REFUNDING OR REPAYMENT BONDS, NOTES OR OTHER OBLIGATIONS SHALL NOT EXCEED THE PRESENT VALUE OF THE AGGREGATE DEBT SERVICE OF THE BONDS, NOTES OR OTHER OBLIGATIONS SO REFUNDED OR REPAID. FOR THE PURPOSES HEREOF, THE PRESENT VALUE OF THE AGGREGATE DEBT SERVICE OF THE REFUNDING OR REPAYMENT BONDS, NOTES OR OTHER OBLIGATIONS SO REFUNDED OR REPAID, SHALL BE CALCULATED BY UTILIZING THE EFFECTIVE INTEREST RATE OF THE REFUNDING OR REPAYMENT BONDS, NOTES OR OTHER OBLIGATIONS, WHICH SHALL BE THAT RATE ARRIVED AT BY DOUBLING THE SEMI-ANNUAL INTEREST RATE (COMPOUNDED SEMI-ANNUALLY) NECESSARY TO DISCOUNT THE DEBT SERVICE PAYMENTS ON THE REFUNDING OR REPAYMENT BONDS, NOTES OR OTHER OBLIGATIONS FROM THE PAYMENT DATES THEREOF TO THE DATE OF ISSUE OF THE REFUNDING OR REPAYMENT BONDS, NOTES OR OTHER OBLIGATIONS AND TO THE PRICE BID INCLUDING ESTIMATED ACCRUED INTEREST OR PROCEEDS RECEIVED BY THE CORPORATION INCLUDING ESTIMATED ACCRUED INTEREST FROM THE SALE THEREOF.

S 2. Section 2 of chapter 393 of the laws of 1994, amending the New York state urban development corporation act relating to the powers of the New York state urban development corporation to make loans, as amended by section 1 of part W of chapter 59 of the laws of 2008, is amended to read as follows:

S 2. This act shall take effect immediately provided, however, that section one of this act shall expire on July 1, [2009] 2010, at which time the provisions of subdivision 26 of section 5 of the New York state urban development corporation act shall be deemed repealed; provided, however, that neither the expiration nor the repeal of such subdivision as provided for herein shall be deemed to affect or impair in any manner any loan made pursuant to the authority of such subdivision prior to such expiration and repeal.

S 3. This act shall take effect immediately.