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

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2009-2010 Regular Sessions

I N S E N A T E

March 5, 2009

Introduced by Sens. STACHOWSKI, AUBERTINE, C. JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Local Government in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law and the public authorities law, in relation to authorizing financing assistance for civic facilities by industrial development agencies, and in relation to the tax exemption status of industrial development agencies; to amend chapter 66 of the laws of 1994, amending the public health law, the general municipal law and the insurance law relating to the financing of life care communities, in relation to the application deadline for eligibility for assistance from an industrial development agency; and providing for the repeal of certain provisions upon the expiration thereof

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

Section 1. Paragraph (b) of subdivision 4 of section 874 of the general municipal law, as amended by chapter 357 of the laws of 1993, is amended and a new subdivision 9 is added to read as follows:

(b) THE UNIFORM TAX EXEMPTION POLICY ESTABLISHED PURSUANT TO THIS SECTION SHALL BE REVIEWED AND READOPTED BY THE AGENCY AT LEAST EVERY FIVE YEARS FOLLOWING A PUBLIC HEARING. NOTICE OF THIS HEARING SHALL BE GIVEN TO THE CHIEF EXECUTIVE OFFICER OF EACH AFFECTED TAX JURISDICTIONS AT LEAST SIXTY DAYS BEFORE THE HEARING. PRIOR TO THE HEARING THE AGENCY SHALL REVIEW, AND RESPOND TO ANY CORRESPONDENCE RECEIVED FROM ANY AFFECTED TAX JURISDICTION. THE AGENCY SHALL ALLOW ANY REPRESENTATIVE OF AN AFFECTED TAX JURISDICTION TO ADDRESS THE AGENCY AT THE HEARING. THE AGENCY SHALL DEVELOP AND SUBMIT A REPORT TO THE AFFECTED TAX JURISDIC-

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

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TIONS SIXTY DAYS PRIOR TO THE HEARING WHICH DETAILS THE PROJECTS WHICH THE AGENCY HAS ASSISTED IN THE PREVIOUS FIVE YEARS AND SHALL INCLUDE INFORMATION SPECIFIC TO EACH PROJECT INCLUDING THE PERIOD OF EXEMPTION; THE TYPE OF PROJECT; THE ESTIMATED PERCENTAGE OF EXEMPTION BY YEAR; THE ESTIMATED VALUE OF ANY OTHER ASSISTANCE PROVIDED BY THE AGENCY; WHETHER COMMITMENTS FOR PAYMENTS IN LIEU OF TAXES WERE MADE AND MET, THE ESTIMATED VALUE OF SUCH PAYMENTS BY YEAR AND AFFECTED TAX JURISDICTION; THE ESTIMATED AMOUNT OF PRIVATE SECTOR INVESTMENT GENERATED BY THE PROJECT; AND THE EXTENT TO WHICH THE PROJECT CREATED OR RETAINED PERMANENT, PRIVATE SECTOR JOBS.

(C) The agency shall establish a procedure for deviation from the uniform tax exemption policy required pursuant to this subdivision. The agency shall set forth in writing the reasons for deviation from such policy, and shall further notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefor.

SUCH NOTICE TO THE AFFECTED TAX JURISDICTIONS SHALL BE GIVEN TO THE CHIEF EXECUTIVE OFFICER OF EACH AFFECTED TAX JURISDICTION AT LEAST THIRTY DAYS PRIOR TO THE MEETING OF THE AGENCY AT WHICH THE AGENCY SHALL CONSIDER WHETHER TO APPROVE SUCH PROPOSED DEVIATION. PRIOR TO TAKING FINAL ACTION AT SAID MEETING, THE AGENCY SHALL REVIEW AND RESPOND TO ANY CORRESPONDENCE RECEIVED FROM ANY AFFECTED TAX JURISDICTION REGARDING SUCH PROPOSED DEVIATION. THE AGENCY SHALL ALLOW ANY REPRESENTATIVE OF AN AFFECTED TAX JURISDICTION PRESENT AT SUCH MEETING TO ADDRESS THE AGENCY REGARDING SUCH PROPOSED DEVIATION.

(9) WITHIN THIRTY DAYS OF THE DATE THAT THE AGENCY DESIGNATES A PROJECT OPERATOR OR OTHER PERSON TO ACT AS AGENT OF THE AGENCY FOR PURPOSES OF EXTENDING A SALES TAX EXEMPTION TO SUCH PERSON, THE AGENCY SHALL FILE A STATEMENT WITH THE DEPARTMENT OF TAXATION AND FINANCE RELATING THERETO, ON A FORM AND IN SUCH MANNER AS IS PRESCRIBED BY THE COMMISSIONER OF TAXATION AND FINANCE, IDENTIFYING EACH SUCH AGENT SO NAMED BY THE AGENCY, SETTING FORTH THE TAXPAYER IDENTIFICATION NUMBER OF EACH SUCH AGENT, GIVING A BRIEF DESCRIPTION OF THE GOODS AND/OR SERVICES INTENDED TO BE EXEMPTED FROM SALES TAXES AS A RESULT OF SUCH APPOINTMENT AS AGENT, INDICATING THE AGENCY'S ROUGH ESTIMATE OF THE VALUE OF THE GOODS AND/OR SERVICES TO WHICH SUCH APPOINTMENT AS AGENT RELATES, INDICATING THE DATE WHEN SUCH DESIGNATION AS AGENT BECAME EFFECTIVE AND INDICATING THE DATE UPON WHICH SUCH DESIGNATION AS AGENT SHALL CEASE.

S 2. Subdivision 4 of section 854 of the general municipal law, as amended by chapter 541 of the laws of 1982, is amended and a new subdivision 13 is added to read as follows:

(4) "Project" - shall mean any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the municipality for whose benefit the agency was created, including, but not limited to, machinery, equipment and other facilities deemed necessary or desirable in connection therewith, or incidental thereto, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, CIVIC commercial or industrial purposes or other economically sound purposes identified and called for to implement a state designated urban cultural park management plan as provided in title G of the parks, recreation and historic preservation law and which may include or mean an industrial pollution control facility, a recreation facility, educational or cultural facility, a horse racing facility [or], a railroad facility OR CIVIC FACILITY, provided, however, no agency shall use its funds in respect of any project wholly or partially outside the municipality for whose benefit

the agency was created without the prior consent thereto by the governing body or bodies of all the other municipalities in which a part or parts of the project is, or is to be, located. PROVIDED FURTHER, THAT NO AGENCY SHALL PROVIDE FINANCIAL ASSISTANCE FOR ANY PROJECT WHERE THE PROJECT APPLICANT HAS ANY AGREEMENT TO SUBSEQUENTLY CONTRACT WITH A MUNICIPALITY FOR THE LEASE OR PURCHASE OF SUCH PROJECT OR PROJECT FACILITY.

(13) "CIVIC FACILITY" - SHALL MEAN ANY FACILITY WHICH SHALL BE OWNED OR OCCUPIED BY A NOT-FOR-PROFIT CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THIS STATE OR AUTHORIZED TO CONDUCT ACTIVITIES IN THIS STATE. SUCH FACILITIES SHALL NOT INCLUDE CONVENTION CENTERS, HOUSING FACILITIES, DORMITORIES FOR EDUCATIONAL INSTITUTIONS OR ROADS, BUILDINGS, WATER SYSTEMS, SEWER SYSTEMS, OR ANY PUBLIC FACILITY FOR USE BY A MUNICIPALITY IN THE PERFORMANCE OF ITS GOVERNMENTAL FUNCTIONS OR MEDICAL FACILITIES WHICH ARE PREDOMINANTLY USED FOR THE DELIVERY OF MEDICAL SERVICES, EXCEPT THAT SUCH FACILITIES SHALL INCLUDE REHABILITATION CENTERS AND HOSPICES. NOTWITHSTANDING THE LIMITATIONS CONTAINED IN THE PRECEDING SENTENCE, A CIVIC FACILITY PROJECT MAY INCLUDE: (A) DORMITORIES FOR EDUCATIONAL INSTITUTIONS; (B) FACILITIES AS DEFINED IN ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW; (C) HOUSING FACILITIES PRIMARILY DESIGNED TO BE OCCUPIED BY INDIVIDUALS SIXTY YEARS OF AGE OR OLDER; AND (D) CONTINUING CARE RETIREMENT COMMUNITIES. NOTHING IN THIS ARTICLE SHALL BE DEEMED TO WAIVE ANY APPLICABLE REQUIREMENT FOR AN OPERATING FACILITY CERTIFICATE, CONSENT OR ANY OTHER APPROVAL AS PROVIDED BY LAW.

S 3. Subdivision 3 of section 859-a of the general municipal law, as added by chapter 356 of the laws of 1993, is amended to read as follows:

3. The agency must give at least [ten] THIRTY days published notice of said public hearing and shall, at the same time, provide notice of such hearing to the chief executive officer of each affected tax jurisdiction within which the project is located. The notice of hearing must state the time and place of the hearing, contain a general, functional description of the project, describe the prospective location of the project, identify the initial owner, operator or manager of the project and generally describe the financial assistance contemplated by the agency with respect to the project, AND PROVIDE AN OPPORTUNITY FOR THE PUBLIC TO REVIEW THE PROJECT APPLICATION, WHICH SHALL INCLUDE AN ANALYSIS OF THE COSTS AND BENEFITS OF THE PROPOSED PROJECT.

S 4. Section 862 of the general municipal law, as added by chapter 1030 of the laws of 1969, is amended to read as follows:

S 862. Restrictions on funds of the agency. 1. No [funds] FINANCIAL ASSISTANCE of the agency shall be used in respect of any project if the completion thereof would result in the removal of [an industrial or manufacturing] A FACILITY OR plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

2. (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, NO FINANCIAL ASSISTANCE OF THE AGENCY SHALL BE PROVIDED IN RESPECT OF ANY PROJECT WHERE FACILITIES OR PROPERTY THAT ARE PRIMARILY USED IN MAKING RETAIL SALES TO CUSTOMERS WHO PERSONALLY VISIT SUCH FACILITIES CONSTITUTE MORE THAN ONE-THIRD OF THE TOTAL PROJECT COST. FOR THE PURPOSES OF

THIS ARTICLE, RETAIL SALES SHALL MEAN: (I) SALES BY A REGISTERED VENDOR UNDER ARTICLE TWENTY-EIGHT OF THE TAX LAW PRIMARILY ENGAGED IN THE RETAIL SALE OF TANGIBLE PERSONAL PROPERTY, AS DEFINED IN SUBPARAGRAPH (I) OF PARAGRAPH FOUR OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THE TAX LAW; OR (II) SALES OF A SERVICE TO SUCH CUSTOMERS. EXCEPT, HOWEVER, THAT TOURISM DESTINATION PROJECTS AND PROJECTS OPERATED BY NOT-FOR-PROFIT CORPORATIONS SHALL NOT BE PROHIBITED BY THIS SUBDIVISION. FOR THE PURPOSE OF THIS PARAGRAPH, "TOURISM DESTINATION" SHALL MEAN A LOCATION OR FACILITY WHICH IS LIKELY TO ATTRACT A SIGNIFICANT NUMBER OF VISITORS FROM OUTSIDE THE ECONOMIC DEVELOPMENT REGION AS ESTABLISHED BY SECTION TWO HUNDRED THIRTY OF THE ECONOMIC DEVELOPMENT LAW, IN WHICH THE PROJECT IS LOCATED.

(B) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION, FINANCIAL ASSISTANCE MAY, HOWEVER, BE PROVIDED TO A PROJECT WHERE FACILITIES OR PROPERTY THAT ARE PRIMARILY USED IN MAKING RETAIL SALES OF GOODS OR SERVICES TO CUSTOMERS WHO PERSONALLY VISIT SUCH FACILITIES TO OBTAIN SUCH GOODS OR SERVICES CONSTITUTE MORE THAN ONE-THIRD OF THE TOTAL PROJECT COST, WHERE (I) THE PROJECT OCCUPANT WOULD, BUT FOR THE ASSISTANCE PROVIDED BY THE AGENCY, LOCATE THE RELATED JOBS OUTSIDE THE STATE, OR (II) THE PREDOMINANT PURPOSE OF THE PROJECT WOULD BE TO MAKE AVAILABLE GOODS OR SERVICES WHICH WOULD NOT, BUT FOR THE PROJECT, BE REASONABLY ACCESSIBLE TO THE RESIDENTS OF THE CITY, TOWN, OR VILLAGE WITHIN WHICH THE PROPOSED PROJECT WOULD BE LOCATED BECAUSE OF A LACK OF REASONABLY ACCESSIBLE RETAIL TRADE FACILITIES OFFERING SUCH GOODS OR SERVICES, OR (III) THE PROJECT IS LOCATED IN A HIGHLY DISTRESSED AREA.

(C) WITH RESPECT TO PROJECTS AUTHORIZED PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION, NO PROJECT SHALL BE APPROVED UNLESS THE AGENCY SHALL FIND AFTER THE PUBLIC HEARING REQUIRED BY SECTION EIGHT HUNDRED FIFTY-NINE OF THIS TITLE THAT UNDERTAKING THE PROJECT WILL SERVE THE PUBLIC PURPOSES OF THIS ARTICLE BY PRESERVING PERMANENT, PRIVATE SECTOR JOBS OR INCREASING THE OVERALL NUMBER OF PERMANENT, PRIVATE SECTOR JOBS IN THE STATE. WHERE THE AGENCY MAKES SUCH A FINDING, PRIOR TO A GRANT OF ASSISTANCE TO THE PROJECT BY THE AGENCY, THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPALITY FOR WHOSE BENEFIT THE AGENCY WAS CREATED SHALL CONFIRM THE PROPOSED ACTION OF THE AGENCY.

3. NO FUNDS OF THE AGENCY SHALL BE USED FOR THE PURPOSE OF PREVENTING THE ESTABLISHMENT OF AN INDUSTRIAL OR MANUFACTURING PLANT, NOR SHALL ANY FUNDS OF THE AGENCY BE GIVEN TO ANY GROUP OR ORGANIZATION WHICH IS ATTEMPTING TO PREVENT THE ESTABLISHMENT OF AN INDUSTRIAL OR MANUFACTURING PLANT WITHIN THIS STATE NOR SHALL SUCH FUNDS BE USED FOR ADVERTISING OR PROMOTIONAL MATERIALS WHICH DEPICT ELECTED OR APPOINTED GOVERNMENT OFFICIALS IN EITHER PRINT OR ELECTRONIC MEDIA.

S 5. The opening paragraph of section 2306 of the public authorities law, as amended by chapter 556 of the laws of 1973, is amended to read as follows:

The purposes of the authority shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehouse, commercial and research facilities and facilities for use by a federal agency or a medical facility including industrial pollution control facilities, which may include transportation facilities including but not limited to those relating to water, highway, rail and air, in one or more areas of the city, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of said city and to improve their medical care and standard of living; provided, however, that the authority shall not undertake any project if

the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in abandonment of one or more plants or facilities of the project applicant located within the state, provided, however, that neither restriction shall apply if the authority shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, NO FINANCIAL ASSISTANCE OF THE AUTHORITY SHALL BE PROVIDED IN RESPECT OF ANY PROJECT WHERE FACILITIES OR PROPERTY THAT ARE PRIMARILY USED IN MAKING RETAIL SALES TO CUSTOMERS WHO PERSONALLY VISIT SUCH FACILITIES CONSTITUTE MORE THAN ONE-THIRD OF THE TOTAL PROJECT COST. FOR THE PURPOSES OF THIS ARTICLE, RETAIL SALES SHALL MEAN: (I) SALES BY A REGISTERED VENDOR UNDER ARTICLE TWENTY-EIGHT OF THE TAX LAW PRIMARILY ENGAGED IN THE RETAIL SALE OF TANGIBLE PERSONAL PROPERTY, AS DEFINED IN SUBPARAGRAPH (I) OF PARAGRAPH FOUR OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THE TAX LAW; OR (II) SALES OF A SERVICE TO SUCH CUSTOMERS. EXCEPT, HOWEVER, THAT TOURISM DESTINATION PROJECTS AND PROJECTS OPERATED BY NOT-FOR-PROFIT CORPORATIONS SHALL NOT BE PROHIBITED BY THIS SECTION. FOR THE PURPOSES OF THIS SECTION, "TOURISM DESTINATION" SHALL MEAN A LOCATION OR FACILITY WHICH IS LIKELY TO ATTRACT A SIGNIFICANT NUMBER OF VISITORS FROM OUTSIDE THE ECONOMIC DEVELOPMENT REGION AS ESTABLISHED BY SECTION TWO HUNDRED THIRTY OF THE ECONOMIC DEVELOPMENT LAW, IN WHICH THE PROJECT IS LOCATED.

NOTWITHSTANDING THE PROVISIONS OF THIS SECTION TO THE CONTRARY, SUCH FINANCIAL ASSISTANCE MAY, HOWEVER, BE PROVIDED TO A PROJECT WHERE FACILITIES OR PROPERTY THAT ARE PRIMARILY USED IN MAKING RETAIL SALES OF GOODS OR SERVICES TO CUSTOMERS WHO PERSONALLY VISIT SUCH FACILITIES TO OBTAIN GOODS OR SERVICES CONSTITUTE MORE THAN ONE-THIRD OF THE TOTAL PROJECT COST, WHERE (I) THE PROJECT OCCUPANT WOULD, BUT FOR THE ASSISTANCE PROVIDED BY THE AUTHORITY, LOCATE THE RELATED JOBS OUTSIDE THE STATE; OR (II) THE PREDOMINANT PURPOSE OF THE PROJECT WOULD BE TO MAKE AVAILABLE GOODS OR SERVICES WHICH WOULD NOT, BUT FOR THE PROJECT, BE REASONABLY ACCESSIBLE TO THE RESIDENTS OF THE CITY OF TROY BECAUSE OF A LACK OF REASONABLY ACCESSIBLE RETAIL FACILITIES OFFERING SUCH GOODS OR SERVICES; OR (III) THE PROJECT IS LOCATED IN A HIGHLY DISTRESSED AREA WITH RESPECT TO PROJECTS AUTHORIZED PURSUANT TO THIS PARAGRAPH, NO PROJECT SHALL BE APPROVED UNLESS THE AUTHORITY SHALL FIND AFTER THE PUBLIC HEARING REQUIRED BY SECTION TWENTY-THREE HUNDRED SEVEN OF THIS TITLE THAT UNDERTAKING THE PROJECT WILL SERVE THE PUBLIC PURPOSES OF THIS ARTICLE BY PRESERVING PERMANENT, PRIVATE SECTOR JOBS OR INCREASING THE OVERALL NUMBER OF PERMANENT, PRIVATE SECTOR JOBS IN THE STATE. WHERE THE AUTHORITY MAKES SUCH A FINDING, PRIOR TO A GRANT OF ASSISTANCE TO THE PROJECT BY THE AUTHORITY, THE CHIEF EXECUTIVE OFFICER OF THE CITY OF AUBURN SHALL CONFIRM THE PROPOSED ACTION OR THE AUTHORITY.

NO FUNDS OF THE AUTHORITY SHALL BE USED FOR THE PURPOSE OF PREVENTING THE ESTABLISHMENT OF AN INDUSTRIAL OR MANUFACTURING PLANT, NOR SHALL ANY FINANCIAL ASSISTANCE OF THE AUTHORITY BE GIVEN TO ANY GROUP OR ORGANIZATION WHICH IS ATTEMPTING TO PREVENT THE ESTABLISHMENT OF AN INDUSTRIAL OR MANUFACTURING PLANT WITHIN THIS STATE NOR SHALL SUCH FINANCIAL ASSISTANCE BE USED FOR ADVERTISING OR PROMOTIONAL MATERIALS WHICH DEPICT ELECTED OR APPOINTED GOVERNMENT OFFICIALS IN EITHER PRINT OR ELECTRONIC MEDIA. To carry out such purpose, the authority shall have power:

S 6. Section 859 of the general municipal law is amended by adding a new subdivision 4 to read as follows:

4. EACH AGENCY WHICH HAS ISSUED BONDS TO FINANCE ANY CIVIC FACILITY, AS SUCH PROJECT IS DEFINED IN SUBDIVISION THIRTEEN OF SECTION EIGHT HUNDRED FIFTY-FOUR OF THIS TITLE, SHALL ANNUALLY SUBMIT A REPORT TO THE DEPARTMENT OF ECONOMIC DEVELOPMENT, THE DIRECTOR OF THE BUDGET, THE CHAIRMAN OF THE SENATE FINANCE COMMITTEE AND THE CHAIRMAN OF THE ASSEMBLY WAYS AND MEANS COMMITTEE. SUCH REPORT SHALL BE SUBMITTED ON THE SAME DAY AND PERTAIN TO THE SAME PERIOD OF TIME AS THE REPORT SPECIFIED IN SUBDIVISIONS ONE AND TWO OF THIS SECTION. SUCH REPORT SHALL CONTAIN A LIST OF THE CIVIC FACILITIES AND FOR EACH SUCH FACILITY CONTAIN A SUMMARY DESCRIPTION INCLUDING, BUT NOT LIMITED TO, TOTAL PROJECT COSTS AND THE AMOUNTS OF BONDS OF THE AGENCY ISSUED AND THE NUMBER OF JOBS CREATED OR RETAINED IN CONNECTION WITH EACH SUCH FACILITY.

S 7. Section 15 of chapter 66 of the laws of 1994, amending the public health law, the general municipal law and the insurance law relating to the financing of life care communities, as amended by chapter 381 of the laws of 2007, is amended to read as follows:

S 15. This act shall take effect immediately, provided, however that the amendment made to subdivision 4 of section 854 of the general municipal law by section eight of this act shall not affect the reversion of such subdivision as provided by section 5 of chapter 905 of the laws of 1986, as amended and that where the continuing care retirement community council is authorized to promulgate regulations by this act, it is hereby authorized to implement the provisions of this act in advance of such regulations[; and provided further that sections one, three, seven, eight, nine, ten, eleven, twelve and thirteen of this act, and paragraph m of subdivision 2 of section 4602 of the public health law, as added by section two of this act, shall apply only to applicants for a certificate of authority pursuant to article 46 of the public health law that have been approved to receive and have received such certificate of authority on or before January 31, 2008].

S 8. This act shall take effect immediately; provided however that sections one through six of this act shall expire and be deemed repealed on July 1, 2011.