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

4425

2009-2010 Regular Sessions

I N  S E N A T E

April 23, 2009

Introduced by Sen. O. JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law, in relation to placing certain restrictions on industrial development agencies providing financial assistance to various industrial and commercial projects unless located on or near property currently or previously used for industrial or commercial development, and providing for additional financial incentives through the industrial development agencies and urban renewal or development agencies to assist such projects

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

Section 1. Legislative findings. The legislature finds that farmland and other greenfields within the state are being encroached upon at an ever alarming rate and that a significant amount of such encroachment is caused by the construction, development and operation upon such lands of commercial and industrial facilities, and that such encroachment has or may have an adverse effect upon the environment, quality of life and land values within such communities, as well as creating severe fiscal problems to pay for the expanded infrastructure within the communities, where such facilities are located.

The legislature further finds that where such facilities have been relocated within the state, from brownfields to such greenfields or farmlands, that such relocation often leads to severe fiscal problems in those communities from which such facilities have been relocated including loss of tax revenue and employment opportunities in such communities.

The legislature further finds that the use or reuse of abandoned, vacated, idled or under used industrial and commercial facility sites (hereafter referred to in this section as "class 2 brownfield sites") and especially such of those sites where expansion, use, reuse or redevelopment is complicated by real or perceived environmental contam-

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

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ination (hereafter referred to in this section as "class 1 brownfield sites"), enhances the tax base of the communities where such facilities and sites are located, increases employment opportunities in those communities which are often depressed, enhances the use of the utilities already existent in those communities and reduces the transportation burden on the entire community while preserving the land values, quality of life and environment in the farmlands and greenfields areas of the state and that therefore such class 1 and class 2 brownfield sites should be preferred, in that order, as sites for industrial and commercial development over farmlands and greenfield sites.

The legislature further finds that the environmental, fiscal and quality of life concerns of local communities raised by the location or relocation of industrial and commercial facilities within the state, of necessity, impact upon the entire state, and the state's policy with regard to the entire state's environment and economic development and therefore are matters of state concern.

The legislature determines, therefore, that it is in the interest of all the people of the state to have a statewide policy to protect and safeguard the farmlands and greenfields of the state and to revitalize and reuse class 1 and class 2 brownfield sites as much as possible for the location or relocation of industrial and commercial facilities within the state.

The legislature recognizes that in order to encourage the revitalization of the brownfield sites and to preserve greenfield sites it is necessary to create new developmental incentives and redirect existing developmental incentives for such purposes and that the industrial development agencies having been created by state legislation to provide incentives for industrial and commercial development, must be directed to use those developmental incentives with which they are empowered, as instrumentalities of state policy, to encourage the revitalization use and reuse of both class 1 and class 2 brownfield sites and to discourage the use of greenfield sites for such development.

The legislature also recognizes that urban renewal or development agencies must also be granted the power to provide additional incentives to encourage the use and reuse and revitalization of class 1 brownfield sites within their jurisdictions and that certain incentives already granted for empire zones should be extended to such agencies and the industrial development agencies on a project by project basis for the use and reuse and revitalization of class 1 and class 2 brownfield sites.

The legislature, therefore, accordingly enacts this act.

S 2. Subdivisions 5 and 6 of section 692 of the general municipal law, subdivision 5 as amended by chapter 437 of the laws of 2000 and subdivision 6 as amended by chapter 486 of the laws of 1982, are amended to read as follows:

5. "Urban development action area". [An] A CLASS ONE BROWNFIELD SITE LOCATED WITHIN A MUNICIPALITY OR AN area designated by the governing body, or by the commission where so authorized to act by the governing body, pursuant to section six hundred ninety-three of this article as appropriate for urban development, at least sixty percent of which constitutes an eligible area.

6. "Urban development action area project". A CLASS ONE BROWNFIELD PROJECT OR A project which shall be consistent with the policy and purposes stated in section six hundred ninety-one of this article, and located in an urban development action area, unless the area designation requirement is waived pursuant to section six hundred ninety-three of

this article. The project summary for an urban development action area project shall include but shall not be limited to: a statement of proposed land uses; proposed public, semi-public, private or community facilities or utilities; a statement as to proposed new codes and ordinances and amendments to existing codes and ordinances as are required or necessary to effectuate the project; a proposed time schedule for the effectuation of such project, and such additional statements or documentation as the agency may deem appropriate.

S 3. Section 692 of the general municipal law is amended by adding two new subdivisions 8 and 9 to read as follows:

8. "URBAN DEVELOPMENT ACTION AREA CLASS ONE BROWNFIELD SITE". ANY SITE ON, WITHIN, AT OR ADJACENT TO ABANDONED, VACATED, IDLED OR UNDER USED INDUSTRIAL OR COMMERCIAL FACILITIES WHERE USE, REUSE, IMPROVEMENT, EXPANSION, DEVELOPMENT OR REDEVELOPMENT IS COMPLICATED BY REAL OR PERCEIVED ENVIRONMENTAL CONTAMINATION INCLUDING SITES INVESTIGATED OR REMEDIATED PURSUANT TO SECTION 27-1313 OR TITLE FIVE OF ARTICLE FIFTY-SIX OF THE ENVIRONMENTAL CONSERVATION LAW, OR TITLE 42, CHAPTER 103 OF THE UNITED STATES CODE.

9. "URBAN DEVELOPMENT ACTION AREA CLASS ONE BROWNFIELD PROJECT". A PROJECT THAT INVOLVES THE USE, REUSE, EXPANSION, IMPROVEMENT, DEVELOPMENT OR REDEVELOPMENT OF A CLASS ONE BROWNFIELD SITE WITHIN THE MUNICIPALITY OR PARTLY WITHIN AND PARTLY WITHOUT THE MUNICIPALITY FOR INDUSTRIAL OR COMMERCIAL PURPOSES WHERE SUCH ACTIVITY WILL HELP TO RETAIN OR CREATE EMPLOYMENT OPPORTUNITIES WITHIN THE MUNICIPALITY.

S 4. The general municipal law is amended by adding a new section 696-e to read as follows:

S 696-E. SPECIAL PROVISIONS RELATING TO FINANCIAL ASSISTANCE TO URBAN DEVELOPMENT ACTION AREA CLASS ONE BROWNFIELD PROJECTS. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE GOVERNING BODY OR COMMISSION, WHERE SO AUTHORIZED BY THE GOVERNING BODY, MAY, BY RESOLUTION, ELECT TO MAKE AN URBAN DEVELOPMENT ACTION AREA CLASS ONE BROWNFIELD PROJECT ELIGIBLE FOR ALL BENEFITS GRANTED AN EMPIRE ZONE EQUIVALENT AREA PURSUANT TO SECTION NINE HUNDRED SIXTY-SIX OF THIS CHAPTER. UPON SUCH ELECTION AND FOR THE PURPOSES OF SUCH SECTION, AN URBAN DEVELOPMENT ACTION AREA CLASS ONE BROWNFIELD PROJECT SHALL BE DEEMED TO BE AN EMPIRE ZONE EQUIVALENT AREA.

S 5. Section 854 of the general municipal law is amended by adding four new subdivisions 4-a, 4-b, 4-c and 4-d to read as follows:

(4-A) "CLASS ONE BROWNFIELD SITE" - SHALL MEAN ANY SITE ON, WITHIN, AT OR ADJACENT TO ABANDONED, VACATED, IDLED, OR UNDER USED INDUSTRIAL OR COMMERCIAL FACILITIES WHERE USE, REUSE, EXPANSION, DEVELOPMENT OR REDEVELOPMENT IS COMPLICATED BY REAL OR PERCEIVED ENVIRONMENTAL CONTAMINATION INCLUDING SITES INVESTIGATED OR REMEDIATED PURSUANT TO SECTION 27-1313 OR TITLE FIVE OF ARTICLE FIFTY-SIX OF THE ENVIRONMENTAL CONSERVATION LAW, OR CHAPTER 103 OF TITLE 42 OF THE UNITED STATES CODE.

(4-B) "CLASS TWO BROWNFIELD SITE" - SHALL MEAN ANY SITE ON, WITHIN OR AT, ABANDONED, VACATED, IDLED OR UNDER USED INDUSTRIAL OR COMMERCIAL FACILITIES BUT WHERE THE USE, REUSE, EXPANSION, DEVELOPMENT OR REDEVELOPMENT IS NOT COMPLICATED BY REAL OR PERCEIVED ENVIRONMENTAL CONTAMINATION.

(4-C) "CLASS ONE BROWNFIELD PROJECT" - SHALL MEAN ANY INDUSTRIAL OR COMMERCIAL PROJECT ON A CLASS ONE BROWNFIELD SITE.

(4-D) "CLASS TWO BROWNFIELD PROJECT" - SHALL MEAN ANY INDUSTRIAL OR COMMERCIAL PROJECT ON A CLASS TWO BROWNFIELD SITE.

S 6. Section 859-a of the general municipal law is amended by adding a new subdivision 1-a to read as follows:

1-A. IF THE PROJECT TO BE ASSISTED BY THE AGENCY IS NOT AN ENHANCEMENT OR ENLARGEMENT OF AN EXISTING PROJECT AND IS NOT LOCATED IN EITHER A CLASS ONE OR CLASS TWO BROWNFIELD SITE, THE AGENCY SHALL SET OUT IN THE RESOLUTION ADOPTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION THE REASONS WHY THE PROJECT WAS NOT LOCATED ON SUCH A SITE AND THE COST TO THE COMMUNITY, IF ANY, FOR INFRASTRUCTURE ADDITION, REPAIR OR REPLACEMENT BY REASON OF THE LOCATION OF THE PROJECT.

S 7. The general municipal law is amended by adding a new section 859-c to read as follows:

S 859-C. SPECIAL PROVISIONS RELATING TO FINANCIAL ASSISTANCE TO CLASS ONE AND CLASS TWO BROWNFIELD PROJECTS. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY:

1. A CLASS ONE BROWNFIELD PROJECT SHALL HAVE FIRST PRIORITY AND A CLASS TWO BROWNFIELD PROJECT SHALL HAVE SECOND PRIORITY OVER AND ABOVE ALL OTHER PROJECTS IN THE SERVICING OF APPLICATIONS FOR FUNDING AND TO ANY FUNDING AVAILABLE FROM THE AGENCY IN ANY FISCAL YEAR, AND SUCH PROJECTS MAY RECEIVE FINANCIAL ASSISTANCE WHICH DEVIATES IN A MORE FAVORABLE WAY FOR THE APPLICANT OF SUCH PROJECTS THAN IS CONSISTENT WITH THE UNIFORM TAX EXEMPTION POLICY OF THE AGENCY.

2. UPON THE ADOPTION OF A LOCAL LAW GIVING THE APPROVAL OF THE CITY, COUNTY (OTHER THAN A COUNTY LOCATED WHOLLY WITHIN A CITY), TOWN OR VILLAGE WHERE A CLASS ONE OR CLASS TWO BROWNFIELD PROJECT IS TO BE LOCATED:

(A) A CLASS ONE BROWNFIELD PROJECT LOCATED WITHIN SUCH MUNICIPALITY SHALL BE ELIGIBLE FOR ALL BENEFITS GRANTED AN EMPIRE ZONE EQUIVALENT AREA PURSUANT TO SECTION NINE HUNDRED SIXTY-SIX OF THIS CHAPTER, AND FOR THE PURPOSE OF SUCH SECTION SUCH CLASS ONE BROWNFIELD PROJECT SHALL BE DEEMED TO BE AN EMPIRE ZONE EQUIVALENT AREA; AND

(B) A CLASS TWO BROWNFIELD PROJECT LOCATED WITHIN SUCH MUNICIPALITY UNLESS OTHERWISE QUALIFIED FOR ALL SUCH BENEFITS, SHALL BE ENTITLED TO ONE-THIRD OF EACH OF THE BENEFITS GRANTED AN EMPIRE ZONE EQUIVALENT AREA PURSUANT TO SECTION NINE HUNDRED SIXTY-SIX OF THIS CHAPTER, AND FOR THE PURPOSE OF SUCH SECTION SUCH CLASS TWO BROWNFIELD PROJECT SHALL BE DEEMED TO BE AN EMPIRE ZONE EQUIVALENT AREA BUT WITH REDUCED BENEFITS AS SET FORTH IN THIS PARAGRAPH.

3. IN ITS ANNUAL REPORT FILED PURSUANT TO SECTION EIGHT HUNDRED FIFTY-NINE OF THIS TITLE EACH AGENCY SHALL FILE A DETAILED REPORT ON ITS ACTIVITIES TO PROMOTE, FUND AND ASSIST CLASS ONE AND CLASS TWO BROWNFIELD PROJECTS AND A DETAILED EXPLANATION OF WHY ANY OTHER PROJECTS ASSISTED BY THE AGENCY DID NOT INVOLVE THE USE, REUSE OR REVITALIZATION OF EITHER CLASS ONE OR CLASS TWO BROWNFIELD SITES, AND THE COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL INCLUDE A REPORT ON THIS ACTIVITY IN THE REPORT HE OR SHE SUBMITS PURSUANT TO SUBDIVISION TWO OF SECTION EIGHT HUNDRED FIFTY-NINE OF THIS TITLE.

4. IN ADMINISTERING THE ALLOCATION OF STATEWIDE BOND RESERVES AMONG LOCAL AGENCIES AND LOCAL AGENCY SET-ASIDES AND CARRY FORWARD APPROVALS, THE COMMISSIONER OF ECONOMIC DEVELOPMENT AND THE MEMBERS OF THE NEW YORK STATE BOND ALLOCATION POLICY ADVISORY PANEL SHALL TAKE INTO ACCOUNT IN MAKING THEIR DECISIONS THE ACTIVITY OR LACK OF IT OF ANY AGENCY IN UTILIZING ITS RESOURCES TO ASSIST PROJECTS TO LOCATE ON CLASS ONE AND CLASS TWO BROWNFIELD SITES AND MAY GIVE MORE FAVORABLE TREATMENT TO THOSE AGENCIES WHICH ARE BEST UTILIZING THEIR RESOURCES TO ASSIST CLASS ONE AND CLASS TWO BROWNFIELD PROJECTS.

S 8. This act shall take effect immediately.