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

5718

2009-2010 Regular Sessions

I N A S S E M B L Y

February 19, 2009

Introduced by M. of A. BRODSKY, HOYT -- Multi-Sponsored by -- M. of A. JOHN -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, the public health law, the environmental conservation law, the public authorities law, and the agriculture and markets law, in relation to enacting the "New York state smart growth compact act"

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

Section 1. Legislative findings and declarations. It is hereby found and declared that:

Land use decisions impact and are impacted by planning and zoning decisions made by cities, towns, and villages within their borders, by such decisions made by municipalities outside their borders, and by county, regional, and state policies and actions. Coordination within the complex web of local, regional, and state jurisdictions is essential if the state is to maintain its economic competitiveness and environmental quality. In order to facilitate coordinated urban and regional planning and public investments, in a cooperative and consensual manner consistent with existing home rule powers and the allocation of jurisdictions, and to foster smart growth, a compact process should be established as hereinafter provided.

S 2. Short title. This act shall be known and may be cited as the "New York state smart growth compact act".

S 3. The general municipal law is amended by adding a new article 20-A to read as follows:

ARTICLE 20-A

NEW YORK STATE SMART GROWTH COMPACT

SECTION 1050. DEFINITIONS.
1050-A. DESIGNATIONS OF SMART GROWTH COMPACT AREAS.
1050-B. SMART GROWTH COMPACT COUNCIL.
1050-C. SMART GROWTH COMPACT PLAN.

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

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1050-D. IMPLEMENTATION OF SMART GROWTH COMPACT PLAN.
1050-E. STATE CONSISTENCY AND INCENTIVES.
1050-F. INDEMNITY.
1050-G. GOVERNOR REPORTS.

S 1050. DEFINITIONS. AS USED IN THIS ARTICLE, THE TERM:

1. "SMART GROWTH COMPACT PLAN", "COMPACT PLAN", OR "PLAN" MEANS THE PLAN PREPARED PURSUANT TO SECTION TWO THOUSAND FIFTY-THREE OF THIS ARTICLE.

2. "SMART GROWTH COMPACT COUNCIL", "COMPACT COUNCIL", OR "COUNCIL" MEANS A COUNCIL ESTABLISHED PURSUANT TO SECTION ONE THOUSAND FIFTY-B OF THIS ARTICLE.

3. "DESIGNATED SMART GROWTH COMPACT AREA", "COMPACT AREA", OR "AREA" MEANS A REGION DESIGNATED IN SECTION ONE THOUSAND FIFTY-A OF THIS ARTICLE.

4. "PARTICIPATING COMMUNITY" MEANS A COUNTY, CITY, TOWN, OR VILLAGE IN A DESIGNATED AREA WITH A CERTIFIED COMPACT PLAN AND, IN THE CASE OF A CITY, TOWN, OR VILLAGE, APPROVED IMPLEMENTING LAND USE REGULATIONS.

5. "LAND USE REGULATION" MEANS AN ORDINANCE OR LOCAL LAW ENACTED BY A LOCAL GOVERNMENT FOR THE REGULATION OF ANY ASPECT OF LAND USE AND COMMUNITY RESOURCE PROTECTION AND INCLUDES ANY ZONING, SUBDIVISION, SPECIAL USE PERMIT, OR SITE PLAN REGULATION OR ANY OTHER REGULATION WHICH PRESCRIBES THE APPROPRIATE USE OF PROPERTY OR THE SCALE, LOCATION, AND INTENSITY OF DEVELOPMENT.

S 1050-A. DESIGNATIONS OF SMART GROWTH COMPACT AREAS. SMART GROWTH COMPACT AREAS SHALL BE GEOGRAPHIC REGIONS OR AREAS BASED ON ENVIRONMENTAL, ECONOMIC, AND SOCIAL FACTORS. A COMPACT AREA MUST INCLUDE AT LEAST TWO MUNICIPALITIES.

S 1050-B. SMART GROWTH COMPACT COUNCIL. 1. FOR EACH DESIGNATED SMART GROWTH COMPACT AREA, A COMPACT COUNCIL SHALL BE ESTABLISHED TO CONSIST OF THE FOLLOWING VOTING MEMBERS: THE MAYOR, SUPERVISOR, COUNTY EXECUTIVE, OR OTHER CHIEF EXECUTIVE OFFICER FROM EACH COUNTY, CITY, TOWN, AND VILLAGE LOCATED IN WHOLE OR IN PART WITHIN THE BOUNDARY OF THE COMPACT AREA. EACH EX-OFFICIO MEMBER MAY APPOINT A DESIGNATED REPRESENTATIVE, BY OFFICIAL AUTHORITY FILED WITH THE COUNCIL, TO EXERCISE HIS OR HER POWERS AND PERFORM HIS OR HER DUTIES, INCLUDING THE RIGHT TO VOTE, ON THE COUNCIL. THE COUNCIL SHALL ELECT ONE OF ITS MEMBERS AS CHAIRPERSON. A MAJORITY CONSTITUTES A QUORUM FOR THE TRANSACTION OF ANY BUSINESS OR THE EXERCISE OF ANY POWER OR FUNCTION OF THE COUNCIL. AN AFFIRMATIVE VOTE OF A MAJORITY IS REQUIRED TO PASS A RESOLUTION OR OTHERWISE EXERCISE ANY FUNCTIONS OR POWERS OF THE COUNCIL, EXCEPT THE ADOPTION OF THE SMART GROWTH COMPACT PLAN, WHICH REQUIRES A UNANIMOUS VOTE OF THE COUNCIL.

2. A COUNCIL SHALL HOLD ITS INITIAL MEETING WITHIN THIRTY DAYS OF THE CERTIFICATION OF THE REVISED SMART GROWTH COMPACT PLAN AND FINAL GENERIC ENVIRONMENTAL IMPACT STATEMENT PURSUANT TO SUBDIVISION FIVE OF SECTION ONE THOUSAND FIFTY-C OF THIS ARTICLE DESIGNATING THE COMPACT AREA FOR WHICH THE COUNCIL WAS ESTABLISHED.

3. EVERY STATE AGENCY AND PUBLIC CORPORATION HAVING JURISDICTION OF LAND, WATER, HOUSING, ECONOMIC DEVELOPMENT, TRANSPORTATION, PARKS, OTHER PUBLIC FACILITIES OR INFRASTRUCTURE WITHIN THE COMPACT AREA, OR PROGRAMS RELATING TO THE PURPOSES AND GOALS OF THIS ARTICLE SHALL, TO THE FULLEST EXTENT PRACTICABLE, OFFER FULL COOPERATION AND ASSISTANCE TO A COUNCIL IN CARRYING OUT THE PROVISIONS OF THIS ARTICLE.

4. EVERY LOCAL OR REGIONAL AGENCY WITH ACTIVITIES RELATING TO A COMPACT AREA MAY OFFER ASSISTANCE TO ITS COUNCIL IN CARRYING OUT THE PROVISIONS OF THIS ARTICLE.

5. EACH COUNCIL SHALL HAVE THE POWER:

(A) TO PREPARE, ADOPT, ENFORCE, AND ENSURE IMPLEMENTATION OF THE SMART GROWTH COMPACT PLAN, WITH THE ADVICE OF THE ADVISORY COMMITTEE;

(B) TO SUE AND BE SUED;

(C) TO MAKE AND EXECUTE CONTRACTS AND ALL OTHER INSTRUMENTS NECESSARY OR CONVENIENT FOR THE EXERCISE OF ITS POWERS AND FUNCTIONS UNDER THIS ARTICLE;

(D) TO ESTABLISH AND MAINTAIN SUCH FACILITIES AS MAY BE NECESSARY FOR THE TRANSACTING OF ITS BUSINESS;

(E) TO APPOINT AN EXECUTIVE OFFICER, OFFICERS, AGENTS, EMPLOYEES, AND PRESCRIBE THEIR DUTIES AND QUALIFICATIONS AND FIX THEIR COMPENSATION;

(F) TO UTILIZE, TO THE EXTENT FEASIBLE, THE STAFF AND FACILITIES OF EXISTING STATE AND COUNTY AGENCIES, PURSUANT TO AN AGREEMENT TO BE MADE BY THE STATE OR BY THE APPROPRIATE COUNTY;

(G) TO HOLD HEARINGS IN THE EXERCISE OF ITS POWERS, FUNCTIONS, AND DUTIES PROVIDED FOR BY THIS ARTICLE;

(H) TO CONTRACT FOR PROFESSIONAL AND TECHNICAL ASSISTANCE AND ADVICE;

(I) TO CONTRACT FOR AND TO ACCEPT ANY ASSISTANCE, INCLUDING BUT NOT LIMITED TO GIFTS, GRANTS, OR LOANS OF FUNDS OR OF PROPERTY FROM THE FEDERAL GOVERNMENT OR ANY AGENCY OR INSTRUMENTALITY THEREOF, OR FROM ANY AGENCY OR INSTRUMENTALITY OF THE STATE, OR FROM ANY OTHER PUBLIC OR PRIVATE SOURCE AND TO COMPLY, SUBJECT TO THE PROVISIONS OF THIS ARTICLE, WITH THE TERMS AND CONDITIONS THEREOF;

(J) TO PROVIDE SCIENTIFIC AND TECHNICAL ASSISTANCE OR TO MAKE GRANTS TO MUNICIPALITIES IN THE COMPACT AREA FOR REVISIONS OF LOCAL COMPREHENSIVE PLANS OR THE RELEVANT LAND USE REGULATIONS DESIGNED TO BRING SUCH PLANS AND LAND USE REGULATIONS INTO CONFORMANCE WITH THE COMPACT PLAN PREPARED AND ADOPTED BY THE COUNCIL. THE COUNCIL MAY MAKE SUCH GRANTS FROM ANY FUNDS WHICH MAY BE APPROPRIATED OR OTHERWISE MADE AVAILABLE TO IT FOR SUCH PURPOSE;

(K) TO ESTABLISH AND MAINTAIN AN EDUCATION AND OUTREACH PROGRAM RELATING TO THE COUNCIL'S WORK;

(L) TO CONVENE CONFERENCES, SEMINARS, MEETINGS, AND TECHNICAL SESSIONS ON ITS OWN OR IN COORDINATION WITH FEDERAL, STATE, COUNTY, TOWN, OR PRIVATE ORGANIZATIONS AS DEEMED NECESSARY RELATIVE TO ITS RESPONSIBILITIES;

(M) TO HAVE AND EXERCISE SUCH OTHER INCIDENTAL AND USUAL POWERS AS ARE NECESSARY AND APPROPRIATE TO CARRY OUT ITS DUTIES.

6. EACH COUNCIL SHALL APPOINT AN ADVISORY COMMITTEE TO ACTIVELY ADVISE AND ASSIST THE COUNCIL IN THE PREPARATION AND IMPLEMENTATION OF A COMPACT PLAN. EACH ADVISORY COMMITTEE SHALL CONSIST OF NOT LESS THAN NINE MEMBERS NOR MORE THAN TWENTY-ONE MEMBERS AND SHALL INCLUDE, BUT NOT BE LIMITED TO, PERSONS REPRESENTATIVE OF ENVIRONMENTAL, ECONOMIC DEVELOPMENT AND REAL ESTATE, MINORITY, AND HOUSING INTERESTS. EACH ADVISORY COMMITTEE, BY A MAJORITY VOTE SHALL ELECT A CHAIRPERSON. EACH COUNCIL SHALL MEET PERIODICALLY WITH, ITS ADVISORY COMMITTEE, MAKE AVAILABLE WORKING DRAFT AND OTHER DOCUMENTS, AND SHALL PROVIDE SUCH SERVICES TO ITS ADVISORY COMMITTEE AS ARE NECESSARY AND APPROPRIATE TO CARRY OUT ITS FUNCTIONS UNDER THIS ARTICLE.

S 1050-C. SMART GROWTH COMPACT PLAN. 1. WITHIN FIFTEEN MONTHS OF ITS FIRST MEETING, A COUNCIL SHALL PREPARE OR CAUSE TO BE PREPARED A DRAFT SMART GROWTH COMPACT PLAN FOR ITS DESIGNATED COMPACT AREA.

2. EACH SMART GROWTH COMPACT PLAN SHALL MEET THE STANDARDS AND REQUIREMENTS OF A SMART GROWTH COMPACT PLAN PURSUANT TO THE PROVISIONS OF SECTION ONE THOUSAND THREE OF THIS CHAPTER.

3. IN ADDITION TO THE REQUIREMENTS OF SUBDIVISION TWO OF THIS SECTION, PERSONS ENGAGED IN PREPARATION OF A SMART GROWTH COMPACT PLAN SHALL CONSIDER AVAILABLE PLANNING STUDIES AND REPORTS, INCLUDING BUT NOT LIMITED TO:

(A) POPULATION AND POPULATION DISTRIBUTION;

(B) AMOUNT, TYPE, INTENSITY, AND GENERAL LOCATION OF COMMERCE, INDUSTRY, AND AGRICULTURAL PRODUCTION;

(C) AMOUNT, TYPE, QUALITY, AND GENERAL LOCATION OF HOUSING;

(D) GENERAL LOCATION AND EXTENT OF EXISTING OR CURRENTLY PLANNED TRANSPORTATION, UTILITY, AND COMMUNITY FACILITIES;

(E) AMOUNT, GENERAL LOCATION, AND INTERRELATIONSHIP OF DIFFERENT CATEGORIES OF TYPES OF LAND USE, INCLUDING EXISTING ZONING MAPS;

(F) AREAS, SITES, OR STRUCTURES OF HISTORICAL, ARCHAEOLOGICAL, ARCHITECTURAL, OR SCENIC SIGNIFICANCE;

(G) NATURAL RESOURCES, INCLUDING AIR, WATER, PARKS, OPEN SPACES, FORESTS, SOILS, RIVERS, WETLANDS AND OTHER WATERS, SHORELINES, FISHERIES, WILDLIFE, VEGETATION, THREATENED SPECIES, AND MINERALS; AND

(H) ANY OTHER MATTER FOUND TO BE IMPORTANT TO ENVIRONMENTAL PROTECTION AND FUTURE DEVELOPMENT.

4. NOTWITHSTANDING ANY PROVISION OF ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW, EACH COUNCIL SHALL BE THE LEAD AGENCY FOR THE GENERIC ENVIRONMENTAL IMPACT STATEMENT, WHICH SHALL BE PART OF THE COMPACT PLAN. SUCH GENERIC ENVIRONMENTAL IMPACT STATEMENT SHALL BE PREPARED IN ACCORDANCE WITH THE PROVISIONS OF SUCH ARTICLE EIGHT. IN PREPARATION OF THE COMPACT PLAN, EACH COUNCIL SHALL:

(A) CONSULT WITH APPROPRIATE OFFICIALS OF ANY REGIONAL, STATE, OR FEDERAL AGENCY WHICH HAS JURISDICTION OVER LANDS AND WATERS WITHIN THE COMPACT AREA;

(B) CONSULT WITH INTERESTED PROFESSIONAL, SCIENTIFIC, AND CITIZENS' ORGANIZATIONS; AND

(C) CONSULT WITH ITS ADVISORY COMMITTEE.

5. FOLLOWING CONSULTATION WITH ITS ADVISORY COMMITTEE AND WITHIN THE FIFTEEN MONTH PERIOD ESTABLISHED THEREFOR, EACH COUNCIL SHALL PUBLISH ITS DRAFT COMPACT PLAN. WITHIN SIX MONTHS OF SUCH PUBLICATION, THE COUNCIL SHALL HOLD PUBLIC INFORMATIONAL MEETINGS WITH AT LEAST ONE PUBLIC HEARING WITHIN EACH OF THE CITIES, TOWNS, AND VILLAGES WITHIN THE COMPACT AREA. DURING THIS PERIOD, THE COUNCIL SHALL RECEIVE AND REVIEW COMMENTS ON THE DRAFT COMPACT PLAN AND GENERIC ENVIRONMENTAL IMPACT STATEMENT FROM STATE AND LOCAL GOVERNMENTS AND THE PUBLIC. WITHIN THREE MONTHS OF THE LAST PUBLIC HEARING REQUIRED BY THIS SECTION, THE COUNCIL SHALL COMPLETE AND RECOMMEND FOR RATIFICATION A REVISED SMART GROWTH COMPACT PLAN AND FINAL GENERIC ENVIRONMENTAL IMPACT STATEMENT TO THE LOCAL LEGISLATIVE BODY OF EACH COUNTY, CITY, TOWN, AND VILLAGE WITHIN THE COMPACT AREA FOR THEIR RATIFICATION AND ADOPTION OF THE STATEMENT OF FINDINGS PURSUANT TO ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW. SUCH RATIFICATION AND ADOPTION SHALL REPRESENT COMMITMENT TO IMPLEMENTATION OF THE PROVISIONS CONTAINED THEREIN. UPON RATIFICATION AND ADOPTION BY ALL SUCH LOCAL LEGISLATIVE BODIES, THE COUNCIL ITSELF SHALL FORMALLY ADOPT THE COMPACT PLAN AND GENERIC ENVIRONMENTAL IMPACT STATEMENT AND SHALL SUBMIT THE COMPACT PLAN AND GENERIC ENVIRONMENTAL IMPACT STATEMENT TO THE SMART GROWTH REVIEW BOARD FOR CERTIFICATION PURSUANT TO THE PROVISIONS OF SECTION ONE THOUSAND SIX OF THIS CHAPTER.

S 1050-D. IMPLEMENTATION OF SMART GROWTH COMPACT PLAN. 1. WITHIN ONE YEAR AFTER A COMPACT PLAN HAS BEEN CERTIFIED BY THE SMART GROWTH REVIEW BOARD, EACH CITY LEGISLATIVE BODY, TOWN BOARD, AND VILLAGE BOARD WITH JURISDICTION WITHIN THE APPLICABLE COMPACT AREA SHALL ADOPT AND AMEND,

AS NECESSARY, LAND USE REGULATIONS, BY LOCAL LAW OR ORDINANCE, RULE, OR REGULATION TO CONFORM ITS LAND USE REGULATIONS TO THE COMPACT PLAN. SUCH ACTION SHALL NOT BE SUBJECT TO THE PROVISIONS OF ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW IF IT IS IN CONFORMANCE WITH THE CONDITIONS AND THRESHOLDS OF THE COMPACT PLAN. AT LEAST SIXTY DAYS BEFORE ADOPTION THEREOF, THE CITY LEGISLATIVE BODY, TOWN, OR VILLAGE BOARD SHALL SUBMIT THE PROPOSED REGULATIONS TO THE COMPACT COUNCIL FOR ITS REVIEW AND APPROVAL. WITHIN TEN DAYS OF RECEIPT OF SUCH PROPOSED REGULATIONS, THE COUNCIL SHALL REVIEW AND APPROVE SUCH PROPOSED REGULATIONS OR, IF IT DOES NOT APPROVE THEM, RETURN THEM WITH COMMENTS ON WHAT NEEDS TO BE DONE TO MAKE THEM APPROVABLE. FOR EACH JURISDICTION, THE COMPACT PLAN SHALL BE DEEMED TO BE IMPLEMENTED UPON ADOPTION BY THE CITY LEGISLATIVE BODY, TOWN, OR VILLAGE BOARD OF APPROVED LAND USE REGULATIONS. UPON RECEIPT OF SUCH APPROVAL, A CITY, TOWN, OR VILLAGE SHALL BE DEEMED TO BE A PARTICIPATING COMMUNITY. ONLY A PARTICIPATING COMMUNITY OR A LOCAL GOVERNMENT WITH ITS OWN CERTIFIED SMART GROWTH PLAN SHALL QUALIFY FOR STATE PRIORITY INCENTIVE FUNDING UNDER THIS ARTICLE OR ARTICLE TWENTY OF THIS CHAPTER. AFTER CITY, TOWN, OR VILLAGE LAND USE REGULATIONS HAVE BEEN APPROVED AND UPON A FINDING THAT A CITY, TOWN, OR VILLAGE HAS CHANGED SUCH REGULATIONS IN A MANNER SUBSTANTIALLY INCONSISTENT WITH THE COMPACT PLAN OR HAS ADMINISTERED ITS APPROVED LAND USE REGULATIONS IN A MANNER SUBSTANTIALLY INCONSISTENT WITH THE COMPACT PLAN, THE COMPACT COUNCIL SHALL WITHDRAW APPROVAL OF SUCH LAND USE REGULATIONS. SUCH WITHDRAWAL OF APPROVAL SHALL BE MADE NOT BEFORE FOURTEEN DAYS AFTER THE COUNCIL HOLDS A PUBLIC HEARING IN THE AFFECTED CITY, TOWN, OR VILLAGE ON THE PROPOSED WITHDRAWAL. NOTICE OF SUCH HEARING SHALL BE PUBLISHED IN A NEWSPAPER HAVING GENERAL CIRCULATION IN THE COMPACT AREA AND NOTICE OF SUCH HEARING SHALL ALSO BE GIVEN BY REGISTERED MAIL TO THE AFFECTED SUPERVISOR OR MAYOR. A CITY, TOWN, OR VILLAGE THAT HAS HAD SUCH APPROVAL WITHDRAWN SHALL NO LONGER BE DEEMED TO BE A PARTICIPATING COMMUNITY.

2. A COUNCIL SHALL HAVE JURISDICTION TO REVIEW AND APPROVE ALL PROPOSED DEVELOPMENT OUTSIDE OF AREAS DESIGNATED FOR GROWTH OR REDEVELOPMENT, DEVELOPMENTS OF REGIONAL SIGNIFICANCE AS IDENTIFIED IN A COMPACT PLAN, AND PROPOSED DEVELOPMENTS FOUND BY THE COUNCIL AFTER PETITION BY A MEMBER THEREOF TO HAVE SIGNIFICANT ADVERSE IMPACT ON THE COMPACT PLAN. ANY MEMBER MAY PETITION THE COUNCIL TO ASSERT REVIEW JURISDICTION OVER A PROPOSED DEVELOPMENT WHICH HAS A SIGNIFICANT ADVERSE IMPACT ON THE GOALS OF THE COMPACT PLAN. IF THE COUNCIL, BY MAJORITY VOTE, ASSERTS JURISDICTION, SUCH PROJECT OR ACTION SHALL BE SUBJECT TO REVIEW BY THE COUNCIL. FOR THE PURPOSES OF REVIEW AND IDENTIFICATION OF PROJECTS COMING UNDER THE JURISDICTION OF THE COUNCIL, THE COUNCIL SHALL DESIGNATE THE RESPONSIBLE PLANNING ENTITY OR STAFF FOR THE PURPOSES OF ADVISING THE COUNCIL WITH RESPECT TO SUCH APPLICATIONS OR PROJECTS. TO THE FULLEST EXTENT POSSIBLE, THE COUNCIL SHALL CONSOLIDATE AND COORDINATE ITS REVIEW WITH THE APPROPRIATE LOCAL GOVERNMENT. AN APPLICANT FOR DEVELOPMENT OUTSIDE AN AREA DESIGNATED FOR GROWTH OR REDEVELOPMENT OR DEVELOPMENT OF REGIONAL SIGNIFICANCE SHALL APPLY TO THE COUNCIL FOR APPROVAL OF THE DEVELOPMENT. APPLICATIONS SHALL BE MADE TO THE COUNCIL ON FORMS AND IN SUCH MANNER AS THE COMPACT PLAN AND COUNCIL SHALL DESIGNATE. AFTER HOLDING A PUBLIC HEARING WITHIN THE CITY, TOWN, OR VILLAGE WHERE SUCH DEVELOPMENT IS PROPOSED TO BE LOCATED, ALL COMPLETED APPLICATIONS SHALL, UNLESS MUTUALLY AGREED OTHERWISE, BE ACTED UPON WITHIN ONE HUNDRED TWENTY DAYS.

3. SUBSEQUENT TO THE ADOPTION OF A COMPACT PLAN, THE PROVISIONS OF ANY OTHER LOCAL LAW, ORDINANCE, RULE, OR REGULATION TO THE CONTRARY NOTWITHSTANDING, NO APPLICATION FOR DEVELOPMENT WITHIN THE COMPACT AREA SUBJECT

TO THE COMPACT PLAN SHALL BE APPROVED BY ANY MUNICIPALITY OR COUNTY OR AGENCY THEREOF OR THE COUNCIL, AND NO STATE APPROVAL, CERTIFICATE, LICENSE, CONSENT, PERMIT, OR FINANCIAL ASSISTANCE FOR THE CONSTRUCTION OF ANY STRUCTURE OR THE DISTURBANCE OF ANY LAND WITHIN SUCH AREA SHALL BE GRANTED, UNLESS SUCH APPROVAL OR GRANT CONFORMS TO THE PROVISIONS OF SUCH COMPACT PLAN; PROVIDED, HOWEVER, THAT THE COUNCIL, BY MAJORITY VOTE, OR THE STATE OF NEW YORK IS HEREBY AUTHORIZED TO WAIVE STRICT COMPLIANCE WITH SUCH PLAN OR WITH ANY ELEMENT OR STANDARD CONTAINED THEREIN, UPON FINDING THAT SUCH WAIVER IS NECESSARY TO ALLEVIATE EXTRAORDINARY HARDSHIP OR MEET COMPELLING PUBLIC NEED.

4. NOTWITHSTANDING ANY INCONSISTENT PROVISIONS IN ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW, WITHIN PARTICIPATING COMMUNITIES, ACTIONS WHOLLY WITHIN THE AREAS DESIGNATED FOR GROWTH OR REDEVELOPMENT IN THE COMPACT AREA IN CONFORMANCE WITH THE COMPACT PLAN AND THE GENERIC ENVIRONMENTAL IMPACT STATEMENT THEREOF SHALL REQUIRE NO FURTHER ENVIRONMENTAL IMPACT STATEMENT WITH RESPECT TO IMPACTS ADDRESSED IN SUCH GENERIC ENVIRONMENTAL IMPACT STATEMENT. FURTHER PROJECT-SPECIFIC COMPLIANCE WITH ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW MAY BE REQUIRED IN THE FORM OF A SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT.

S 1050-E. STATE CONSISTENCY AND INCENTIVES. 1. EVERY STATE AGENCY, PUBLIC BENEFIT CORPORATION, AND AUTHORITY CONDUCTING, FUNDING, OR APPROVING ACTIVITIES AFFECTING LOCAL GOVERNMENTS SHALL:

(A) CONDUCT OR SUPPORT ITS ACTIVITIES IN A MANNER WHICH IS, TO THE MAXIMUM EXTENT PRACTICABLE, CONSISTENT WITH SMART GROWTH PRINCIPLES, AS DEFINED IN THIS ARTICLE, AND CONSISTENT WITH ANY CERTIFIED SMART GROWTH COMPACT PLAN; AND

(B) GIVE PRIORITY IN FUNDING, TO THE FULLEST EXTENT PRACTICABLE, TO MUNICIPALITIES WHICH HAVE SMART GROWTH PLANS CERTIFIED BY THE BOARD.

2. SPECIFIC INCENTIVES AVAILABLE TO PARTICIPATING COMMUNITIES WITHIN COMPACT AREAS WITH CERTIFIED SMART GROWTH COMPACT PLANS SHALL INCLUDE, BUT NOT BE LIMITED TO:

(A) PRIORITY FUNDING FOR CONSOLIDATED DRINKING WATER INFRASTRUCTURE PROJECTS;

(B) PRIORITY FUNDING FOR CONSOLIDATED CLEAN WATER AND WATER POLLUTION CONTROL PROJECTS;

(C) PRIORITY STATUS FOR OPEN SPACE LAND ACQUISITION AND EASEMENTS BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION OR THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION IN AREAS LOCATED OUTSIDE GROWTH OR REDEVELOPMENT AREAS IN CERTIFIED SMART GROWTH PLANS PURSUANT TO SECTIONS 54-0303 AND 56-0307 OF THE ENVIRONMENTAL CONSERVATION LAW;

(D) RESTRICTION ON INDUSTRIAL DEVELOPMENT AUTHORITY PROJECT FUNDING TO LOCAL GOVERNMENTS WHICH HAVE CERTIFIED SMART GROWTH PLANS, WHERE A MUNICIPALITY WITHIN AN INDUSTRIAL DEVELOPMENT AUTHORITY'S JURISDICTION HAS APPLIED FOR AND RECEIVED SMART GROWTH PLAN CERTIFICATION PURSUANT TO SECTION EIGHT HUNDRED SIXTY-TWO OF THIS CHAPTER;

(E) ENERGY ASSISTANCE PURSUANT TO SECTIONS ONE THOUSAND FIVE AND ONE THOUSAND EIGHT HUNDRED FIFTY-FOUR OF THE PUBLIC AUTHORITIES LAW;

(F) PRIORITY FUNDING FOR AGRICULTURAL PROTECTION PURSUANT TO SECTION THREE HUNDRED TWENTY-FIVE OF THE AGRICULTURE AND MARKETS LAW;

(G) WITHIN THE LIMITS OF ANY APPROPRIATIONS THEREFOR, GRANTS TO ANY LOCAL GOVERNMENT AGENCY FOR DESIGN OR OTHER ACTIVITIES TO FACILITATE CONSTRUCTION PROJECTS PROVIDED FOR IN A CERTIFIED SMART GROWTH COMPACT PLAN; PROVIDED THAT SUCH GRANT SHALL NOT EXCEED TEN PERCENT OF THE ESTIMATED COST OF SUCH CONSTRUCTION PROJECTS; AND

(H) WITHIN THE LIMITS OF ANY APPROPRIATIONS THEREFOR, GRANTS FOR THE PURCHASE OF HOMES IN OLDER URBAN NEIGHBORHOODS, HOMES EXISTING AS OF THE

EFFECTIVE DATE OF THIS ARTICLE, AND HOMES WITHIN CLOSE PROXIMITY TO PLACES OF WORK.

S 1050-F. INDEMNITY. 1. THERE MAY BE DEFENSE BY AND SHALL BE INDEMNITY FROM THE STATE IN THE EVENT OF LEGAL ACTIONS OR PROCEEDINGS BROUGHT AGAINST ANY LOCAL GOVERNMENT OR ITS AGENTS, SERVANTS, OFFICIALS, OR EMPLOYEES THAT MAY RESULT FROM THE IMPLEMENTATION OF A CERTIFIED SMART GROWTH COMPACT PLAN. INDEMNITY SHALL NOT APPLY TO ANY SUCH CLAIM IN WHICH A FINAL COURT DETERMINATION RESULTS IN A FINDING OF INCONSISTENCY WITH A CERTIFIED SMART GROWTH COMPACT PLAN, INTENTIONAL WRONGDOING, RECKLESSNESS, OR AN UNLAWFUL DISCRIMINATORY PRACTICE, INCLUDING THE FINDING THAT ANY LAND USE CONTROL WAS INTENDED TO EXCLUDE A PARTICULAR GROUP OR INDIVIDUAL, OR GROSS NEGLIGENCE ON THE PART OF SUCH MUNICIPALITY OR ITS AGENTS, SERVANTS, OFFICIALS, OR EMPLOYEES. ACTIONS OR PROCEEDINGS BROUGHT UNDER SUBDIVISIONS TWO, TWO-A, THREE-B, FOUR, PARAGRAPHS (A) AND (B) OF SUBDIVISION FIVE, AND SUBDIVISIONS SIX, SEVEN, FOURTEEN, AND EIGHTEEN OF SECTION TWO HUNDRED NINETY-SIX OF THE EXECUTIVE LAW AND 42 U.S.C. SECTIONS 1981, 1983, AND 1988 SHALL BE INDEMNIFIED BY THE STATE ONLY SO FAR AS THE GRIEVANCE ALLEGED IN SUCH ACTION OR PROCEEDING WAS THE RESULT OF AN ACT CONSISTENT WITH THIS ARTICLE OR THE PLAN. SUCH INDEMNITY SHALL BE CONDITIONED UPON (A) THE DELIVERY BY THE GOVERNING BODY OR ITS AGENT AGAINST WHOM THE LEGAL ACTION OR PROCEEDING WAS COMMENCED TO THE ATTORNEY GENERAL OR AN ASSISTANT ATTORNEY GENERAL AT AN OFFICE OF THE DEPARTMENT OF LAW IN THE STATE THE ORIGINAL OR A COPY OF ANY SUMMONS, COMPLAINT, PROCESS, NOTICE, DEMAND, OR PLEADING WITHIN FIFTEEN DAYS AFTER SUCH DOCUMENT IS SERVED UPON SUCH GOVERNING BODY OR ITS AGENT, AND (B) THE FULL COOPERATION OF THE GOVERNING BODY OR ITS AGENTS AGAINST WHOM THE ACTION OR PROCEEDING WAS COMMENCED IN THE DEFENSE OF SUCH ACTION OR PROCEEDING AND IN DEFENSE OF ANY ACTION OR PROCEEDING AGAINST THE STATE BASED UPON THE SAME ACT OR OMISSION, AND IN THE PROSECUTION OF ANY APPEAL. THERE SHALL BE NO INDEMNITY IN THE EVENT OF A SETTLEMENT BETWEEN OR AMONG THE PARTIES TO SUCH LEGAL ACTION OR PROCEEDING IN THOSE INSTANCES IN WHICH THE ATTORNEY GENERAL IS NOT PROVIDING THE DEFENSE FOR THE GOVERNING BODY OR ITS AGENTS, UNLESS SUCH SETTLEMENT IS APPROVED BY THE ATTORNEY GENERAL; AND

2. A VILLAGE, TOWN, CITY, COUNTY, OR SMART GROWTH COMPACT COUNCIL WITH A CERTIFIED SMART GROWTH PLAN OR CERTIFIED SMART GROWTH COMPACT PLAN SHALL BE ELIGIBLE FOR LOW-INTEREST LOANS FROM THE NEW YORK STATE SMART GROWTH REVOLVING LOAN FUND, PURSUANT TO THE PROVISIONS OF SECTION NINETY-SEVEN-CCCC OF THE STATE FINANCE LAW.

S 1050-G. GOVERNOR REPORTS. ON OR BEFORE THE FIRST DAY OF FEBRUARY OF EACH YEAR, THE GOVERNOR SHALL REPORT TO THE LEGISLATURE ON THE IMPLEMENTATION OF THIS ARTICLE AND SHALL PROPOSE POTENTIAL COMPACT AREAS FOR DESIGNATION BY THE LEGISLATURE.

S 4. Section 1161 of the public health law, as added by chapter 413 of the laws of 1996, is amended to read as follows:

S 1161. Eligible projects; priority ranking. Subject to the provisions of section thirty-two of [the] chapter FOUR HUNDRED THIRTEEN of the laws of [1996 which added this section] NINETEEN HUNDRED NINETY-SIX, in consultation with the commissioner of environmental conservation, the commissioner shall establish and maintain a list of potentially eligible projects and shall establish, pursuant to rules and regulations, a process for listing potentially eligible projects identified by potential recipients and a priority ranking system for the purpose of providing financial assistance to recipients for such projects under this title. In establishing such system, the commissioner shall take into account the public health significance of such potentially eligible projects,

which shall include, but need not be limited to, an assessment of (i) public health and safety; (ii) population affected; (iii) attainment of state drinking water quality goals and standards; (iv) taking into consideration the water resources management strategy pursuant to title twenty-nine of article fifteen of the environmental conservation law; and (v) compliance with state and federal law, rules, and regulations. TO THE GREATEST EXTENT PERMITTED BY FEDERAL LAW, PRIORITY SHALL BE GIVEN TO POTENTIALLY ELIGIBLE PROJECTS CONSOLIDATING TWO OR MORE MUNICIPALITIES THAT HAVE CERTIFIED SMART GROWTH PLANS.

S 5. Subdivision 2 of section 17-1909 of the environmental conservation law is amended by adding a new paragraph f to read as follows:

F. TO THE GREATEST EXTENT PERMITTED BY FEDERAL LAW, PRIORITY SHALL BE GIVEN TO POTENTIALLY ELIGIBLE PROJECTS CONSOLIDATING TWO OR MORE MUNICIPALITIES, THAT HAVE CERTIFIED SMART GROWTH PLANS.

S 6. The opening paragraph of section 862 of the general municipal law is designated subdivision 1 and a new subdivision 2 is added to read as follows:

2. IF ANY MUNICIPALITY WITHIN THE GEOGRAPHIC LIMITS OF THE AGENCY HAS A CERTIFIED SMART GROWTH COMPACT PLAN PURSUANT TO ARTICLE TWENTY-A OF THIS CHAPTER, NO FINANCIAL ASSISTANCE OF THE AGENCY SHALL BE USED WITH RESPECT TO ANY PROJECT LOCATED WITHIN ANY MUNICIPALITY WITHOUT A CERTIFIED SMART GROWTH COMPACT PLAN, AND FINANCIAL ASSISTANCE OF THE AGENCY SHALL BE USED ONLY WITH RESPECT TO PROJECTS LOCATED WITHIN AREAS IDENTIFIED IN A SMART GROWTH COMPACT PLAN AS GROWTH OR REDEVELOPMENT AREAS WITHIN WHICH PROJECTS ARE ELIGIBLE FOR ASSISTANCE FROM THE AGENCY.

S 7. Section 1005 of the public authorities law is amended by adding a new subdivision 16 to read as follows:

16. TO PROVIDE FINANCIAL ASSISTANCE FOR THE INSTALLATION OF ENERGY EFFICIENCY MEASURES OR INNOVATIVE ENERGY PRODUCTION TECHNOLOGIES, OR BOTH, FOR STRUCTURES AND PROCESSES LOCATED WITHIN GROWTH AND REDEVELOPMENT AREAS IDENTIFIED IN AN APPROVED SMART GROWTH COMPACT PLAN PURSUANT TO ARTICLE TWENTY-A OF THE GENERAL MUNICIPAL LAW.

S 8. Section 54-0303 of the environmental conservation law is amended by adding a new subdivision 8 to read as follows:

8. IN EVALUATING APPLICATIONS FOR OPEN SPACE CONSERVATION PROJECTS, THE COMMISSIONER AND THE COMMISSIONER OF THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION SHALL GRANT A PREFERENCE TO ANY PROJECT IDENTIFIED AS PART OF A PRESERVATION AREA UNDER A CERTIFIED SMART GROWTH COMPACT PLAN PURSUANT TO ARTICLE TWENTY-A OF THE GENERAL MUNICIPAL LAW.

S 9. Section 56-0307 of the environmental conservation law is amended by adding a new subdivision 5-a to read as follows:

5-A. IN EVALUATING APPLICATIONS FOR OPEN SPACE CONSERVATION PROJECTS, THE COMMISSIONER AND THE COMMISSIONER OF THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION SHALL GRANT A PREFERENCE TO ANY PROJECT IDENTIFIED AS PART OF A PRESERVATION AREA UNDER A CERTIFIED SMART GROWTH COMPACT PLAN PURSUANT TO ARTICLE TWENTY-A OF THE GENERAL MUNICIPAL LAW.

S 10. Paragraph (c) of subdivision 2 of section 325 of the agriculture and markets law, as added by chapter 413 of the laws of 1996, is amended to read as follows:

(c) In evaluating applications for funding, the commissioner shall give priority to projects intended to preserve viable agricultural land, as defined in section three hundred one of this chapter; THAT ARE IN A PRESERVATION AREA UNDER A CERTIFIED SMART GROWTH COMPACT PLAN PURSUANT TO ARTICLE TWENTY-A OF THE GENERAL MUNICIPAL LAW; that are in areas facing significant development pressure; and that serve as a buffer for

a significant natural public resource containing important ecosystem or habitat characteristics.

S 11. Severability. The provisions of this act shall be severable, and if any clause, sentence, paragraph, subdivision, or section of this act shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or section thereof directly involved in the controversy in which such judgment shall have been rendered.

S 12. This act shall take effect on the same date as a chapter of the laws of 2009 entitled "AN ACT to amend the general municipal law, the environmental conservation law, the public authorities law, the agriculture and markets law, the real property tax law, the state finance law and the executive law, in relation to enacting the Smart Growth for the New Century Act", as proposed in legislative bill number A.697 takes effect.