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

3557--A

2009-2010 Regular Sessions

I N S E N A T E

March 24, 2009

Introduced by Sens. ADAMS, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the New York state urban development corporation act, in relation to enacting the food retail establishment subsidization for healthy communities (FRESH Communities) act; and to amend the tax law, in relation to establishing the retail food establishment living wages tax credit

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

Section 1. Short title. This act shall be known and may be cited as the "food retail establishment subsidization for healthy communities act".

S 2. Legislative intent. The legislature finds that the lack of access to fresh foods is a problem of growing concern in many communities across the state. Substantial increases in urban land values and rents, limited access to financing and other economic pressures have left many lower-income residents in urban and rural areas underserved by supermarkets and other food retail establishments. The resulting lack of access to a variety of fresh food retailers makes it more difficult and expensive for these residents to maintain a nutritionally balanced diet and leads to increased public health costs, dilutes the value of public assistance for food purchases, leads to greater travel times and energy expenditures to obtain fresh food, and deprives the state's farmers of markets for their products. Providing access to financial assistance for urban and rural supermarkets in underserved areas will remedy these

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

LBD09071-03-9

adverse conditions, create employment opportunities and help to revitalize and stabilize currently underserved neighborhoods.

S 3. Paragraph (k) of subdivision 1 of section 16-m of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by section 4 of part FF of chapter 59 of the laws of 2006, is amended and a new paragraph (1) is added to read as follows:

(k) Assistance for regional partnership proposals, as provided in subdivision 12 of section 3154 of the public authorities law[.]; AND

(1) LOANS, LOAN GUARANTEES, INTEREST SUBSIDIES AND GRANTS TO BUSINESSES, MUNICIPALITIES, NOT-FOR-PROFIT CORPORATIONS OR LOCAL DEVELOPMENT CORPORATIONS FOR THE PURPOSE OF ATTRACTING, MAINTAINING OR PERMITTING THE EXPANSION OF FOOD RETAIL ESTABLISHMENTS IN UNDERSERVED AREAS. FOR PURPOSES OF THIS PARAGRAPH, "UNDERSERVED AREAS" SHALL INCLUDE LOW OR MODERATE-INCOME CENSUS TRACTS, AREAS OF BELOW AVERAGE SUPERMARKET DENSITY OR HAVING A SUPERMARKET CUSTOMER BASE WITH MORE THAN FIFTY PERCENT LIVING IN LOW-INCOME CENSUS TRACTS, OR OTHER AREAS DEMONSTRATED TO HAVE SIGNIFICANT ACCESS LIMITATIONS DUE TO TRAVEL DISTANCE, AS DETERMINED BY THE CORPORATION, AND "FOOD RETAIL ESTABLISHMENTS" SHALL INCLUDE SUPERMARKETS AND OTHER GROCERY RETAILERS THAT OPERATE ON A SELF-SERVICE BASIS AND SELL A MINIMUM PERCENTAGE OF PRODUCE, MEAT, POULTRY, SEAFOOD, BAKED GOODS AND/OR DAIRY PRODUCTS AND WHICH:

(A) PARTICIPATES IN THE PRIDE OF NEW YORK PROGRAM;

(B) ACCEPT PAYMENT FROM ELECTRONIC BENEFIT TRANSFER THROUGH THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM AND THROUGH THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN;

(C) DO NOT CHARGE A MEMBERSHIP FEE;

(D) HIRE RESIDENTS LIVING WITHIN A TWENTY MILE RADIUS OF SUCH RETAIL FOOD ESTABLISHMENT; AND

(E) PAY ITS EMPLOYEES AN AMOUNT AT LEAST EQUAL TO A LIVING WAGE RATE, WHICH SHALL BE DETERMINED BY THE COMMISSIONER OF LABOR; PROVIDED, HOWEVER, THAT SUCH TERM SHALL NOT INCLUDE CONVENIENCE STORES, AND THAT REAL ESTATE PROJECTS WHICH HAVE MULTI-TENANT USES ARE NOT ELIGIBLE UNLESS A MINIMUM OF FIFTY PERCENT OF THE BUILDING AREA FOR WHICH ASSISTANCE IS SOUGHT WILL BE USED FOR FOOD RETAIL ESTABLISHMENTS.

S 4. Section 210 of the tax law is amended by adding a new subdivision 41 to read as follows:

41. RETAIL FOOD ESTABLISHMENT LIVING WAGES TAX CREDIT. (A) GENERAL. A TAXPAYER THAT IS A RETAIL FOOD ESTABLISHMENT AS DEFINED IN PARAGRAPH (B) OF THIS SUBDIVISION SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE, FOR PROVIDING LIVING WAGES TO ITS EMPLOYEES.

(B) RETAIL FOOD ESTABLISHMENTS. AN ELIGIBLE TAXPAYER SHALL BE A RETAIL FOOD ESTABLISHMENT AS DEFINED IN PARAGRAPH (L) OF SUBDIVISION ONE OF SECTION SIXTEEN-M OF SECTION ONE OF THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION ACT.

(C) AMOUNT OF CREDIT. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE DIFFERENCE BETWEEN THE NEW YORK STATE MINIMUM WAGE ESTABLISHED PURSUANT TO SECTION SIX HUNDRED FIFTY-TWO OF THE LABOR LAW AND THE LIVING WAGE, TO BE DEFINED BY THE COMMISSIONER OF LABOR.

(D) CARRYOVER. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. PROVIDED, HOWEVER, IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR

MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxi) to read as follows:

(XXXI) RETAIL FOOD ESTABLISHMENT TAX CREDIT UNDER SUBSECTION (K-1)	AMOUNT OF CREDIT UNDER SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN

S 6. Section 606 of the tax law is amended by adding a new subsection (k-1) to read as follows:

(K-1) RETAIL FOOD ESTABLISHMENT LIVING WAGES TAX CREDIT. (1) A TAXPAYER THAT IS A RETAIL FOOD ESTABLISHMENT AS DEFINED IN PARAGRAPH (1) OF SUBDIVISION ONE OF SECTION SIXTEEN-M OF SECTION ONE OF THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION ACT SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THE ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE EQUAL TO THE DIFFERENCE BETWEEN THE NEW YORK STATE MINIMUM WAGE ESTABLISHED PURSUANT TO SECTION SIX HUNDRED FIFTY-TWO OF THE LABOR LAW AND THE LIVING WAGE TO BE DETERMINED BY THE COMMISSIONER OF LABOR.

(2) IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

S 7. This act shall take effect on the first of April next succeeding the date on which it shall have become a law; provided, however:

1. that the urban development corporation shall be immediately authorized to take any and all actions necessary to fully implement the provision of section three of this act on or before such effective date; and provided further, that the amendments to section 16-m of the urban development corporation act made by section three of this act shall not affect the expiration of such section and shall be deemed to expire therewith; and

2. that the credit established by sections four, five and six of this act shall apply to taxable years beginning on or after January 1, 2010.