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

5560--B

2009-2010 Regular Sessions

I N S E N A T E

May 15, 2009

Introduced by Sens. OPPENHEIMER, MONTGOMERY, DUANE, KLEIN, KRUEGER, MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to establishing a state smart growth public infrastructure policy act

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

Section 1. The environmental conservation law is amended by adding a new article 6 to read as follows:

ARTICLE 6

STATE SMART GROWTH PUBLIC INFRASTRUCTURE POLICY ACT

SECTION 6-0101. SHORT TITLE.
6-0103. DEFINITIONS.
6-0105. STATE SMART GROWTH PUBLIC INFRASTRUCTURE POLICY.
6-0107. STATE SMART GROWTH PUBLIC INFRASTRUCTURE CRITERIA.
6-0109. SMART GROWTH ADVISORY COMMITTEES.
6-0111. PRIVATE RIGHT OF ACTION.

S 6-0101. SHORT TITLE.

THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "STATE SMART GROWTH PUBLIC INFRASTRUCTURE POLICY ACT".

S 6-0103. DEFINITIONS.

AS USED IN THIS ARTICLE:

1. "CRITERIA" SHALL MEAN THE STATE SMART GROWTH PUBLIC INFRASTRUCTURE CRITERIA PROVIDED IN SECTION 6-0107 OF THIS ARTICLE.

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

LBD02860-13-0

2. "STATE INFRASTRUCTURE AGENCY" SHALL MEAN THE DEPARTMENT, THE DEPARTMENT OF TRANSPORTATION, THE DEPARTMENT OF EDUCATION, THE DEPARTMENT OF HEALTH, THE DEPARTMENT OF STATE, THE NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION, THE NEW YORK STATE HOUSING FINANCE AGENCY, THE HOUSING TRUST FUND CORPORATION, THE DORMITORY AUTHORITY, THE THRUWAY AUTHORITY, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, THE EMPIRE STATE DEVELOPMENT CORPORATION, THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION AND ALL OTHER NEW YORK AUTHORITIES. ANY SUBSIDIARY OF, OR CORPORATION WITH THE SAME MEMBERS OR DIRECTORS AS, A PUBLIC BENEFIT CORPORATION IDENTIFIED IN THIS SUBDIVISION SHALL ALSO BE DEEMED TO BE WITHIN THE DEFINITION OF STATE INFRASTRUCTURE AGENCY UNDER THIS ARTICLE.

3. "MUNICIPAL CENTERS" SHALL MEAN AREAS OF CONCENTRATED AND MIXED LAND USES THAT SERVE AS CENTERS FOR VARIOUS ACTIVITIES, INCLUDING, BUT NOT LIMITED TO, CENTRAL BUSINESS DISTRICTS, MAIN STREETS, DOWNTOWN AREAS, BROWNFIELD OPPORTUNITY AREAS, DOWNTOWN AREAS OF LOCAL WATERFRONT REVITALIZATION PROGRAM AREAS, TRANSIT-ORIENTED DEVELOPMENT, ENVIRONMENTAL JUSTICE AREAS, AND HARDSHIP AREAS. MUNICIPAL CENTERS SHALL ALSO INCLUDE: AREAS ADJACENT TO MUNICIPAL CENTERS, AS DEFINED IN THIS SUBDIVISION, WHICH HAVE CLEARLY DEFINED BORDERS, ARE DESIGNATED FOR CONCENTRATED DEVELOPMENT IN THE FUTURE IN A MUNICIPAL OR REGIONAL COMPREHENSIVE PLAN, AND EXHIBIT STRONG LAND USE, TRANSPORTATION, INFRASTRUCTURE AND ECONOMIC CONNECTIONS TO A MUNICIPAL CENTER; AND AREAS DESIGNATED IN A MUNICIPAL OR COMPREHENSIVE PLAN, AND APPROPRIATELY ZONED IN A MUNICIPAL ZONING ORDINANCE, AS A FUTURE MUNICIPAL CENTER.

S 6-0105. STATE SMART GROWTH PUBLIC INFRASTRUCTURE POLICY.

IT IS THE PURPOSE OF THIS ARTICLE TO AUGMENT THE STATE'S ENVIRONMENTAL POLICY BY DECLARING A FISCALLY PRUDENT STATE POLICY OF MAXIMIZING THE SOCIAL, ECONOMIC AND ENVIRONMENTAL BENEFITS FROM PUBLIC INFRASTRUCTURE DEVELOPMENT THROUGH MINIMIZING UNNECESSARY COSTS OF SPRAWL DEVELOPMENT INCLUDING ENVIRONMENTAL DEGRADATION, DISINVESTMENT IN URBAN AND SUBURBAN COMMUNITIES AND LOSS OF OPEN SPACE INDUCED BY SPRAWL FACILITATED BY THE FUNDING OR DEVELOPMENT OF NEW OR EXPANDED TRANSPORTATION, SEWER AND WASTE WATER TREATMENT, WATER, EDUCATION, HOUSING AND OTHER PUBLICLY SUPPORTED INFRASTRUCTURE INCONSISTENT WITH SMART GROWTH PUBLIC INFRASTRUCTURE CRITERIA.

S 6-0107. STATE SMART GROWTH PUBLIC INFRASTRUCTURE CRITERIA.

1. IN ADDITION TO MEETING OTHER CRITERIA AND REQUIREMENTS OF LAW GOVERNING APPROVAL, DEVELOPMENT, FINANCING AND STATE AID FOR THE CONSTRUCTION OF NEW OR EXPANDED PUBLIC INFRASTRUCTURE OR THE RECONSTRUCTION THEREOF, NO STATE INFRASTRUCTURE AGENCY SHALL APPROVE, UNDERTAKE, SUPPORT OR FINANCE A PUBLIC INFRASTRUCTURE PROJECT, INCLUDING PROVIDING GRANTS, AWARDS, LOANS OR ASSISTANCE PROGRAMS, UNLESS, TO THE EXTENT PRACTICABLE, IT IS CONSISTENT WITH THE RELEVANT CRITERIA SPECIFIED IN SUBDIVISION TWO OF THIS SECTION.

2. THE FOLLOWING ARE THE STATE SMART GROWTH PUBLIC INFRASTRUCTURE CRITERIA:

A. TO ADVANCE PROJECTS FOR THE USE, MAINTENANCE OR IMPROVEMENT OF EXISTING INFRASTRUCTURE;

B. TO ADVANCE PROJECTS LOCATED IN MUNICIPAL CENTERS;

C. TO ADVANCE PROJECTS IN DEVELOPED AREAS OR AREAS DESIGNATED FOR CONCENTRATED INFILL DEVELOPMENT IN A MUNICIPALLY APPROVED COMPREHENSIVE LAND USE PLAN, LOCAL WATERFRONT REVITALIZATION PLAN AND/OR BROWNFIELD OPPORTUNITY AREA PLAN;

D. TO PROTECT, PRESERVE AND ENHANCE THE STATE'S RESOURCES, INCLUDING AGRICULTURAL LAND, FORESTS, SURFACE AND GROUNDWATER, AIR QUALITY, RECRE-

ATION AND OPEN SPACE, SCENIC AREAS, AND SIGNIFICANT HISTORIC AND ARCHEOLOGICAL RESOURCES;

E. TO FOSTER MIXED LAND USES AND COMPACT DEVELOPMENT, DOWNTOWN REVITALIZATION, BROWNFIELD REDEVELOPMENT, THE ENHANCEMENT OF BEAUTY IN PUBLIC SPACES, THE DIVERSITY AND AFFORDABILITY OF HOUSING IN PROXIMITY TO PLACES OF EMPLOYMENT, RECREATION AND COMMERCIAL DEVELOPMENT AND THE INTEGRATION OF ALL INCOME AND AGE GROUPS;

F. TO PROVIDE MOBILITY THROUGH TRANSPORTATION CHOICES INCLUDING IMPROVED PUBLIC TRANSPORTATION AND REDUCED AUTOMOBILE DEPENDENCY;

G. TO COORDINATE BETWEEN STATE AND LOCAL GOVERNMENT AND INTERMUNICIPAL AND REGIONAL PLANNING;

H. TO PARTICIPATE IN COMMUNITY BASED PLANNING AND COLLABORATION;

I. TO ENSURE PREDICTABILITY IN BUILDING AND LAND USE CODES; AND

J. TO PROMOTE SUSTAINABILITY BY STRENGTHENING EXISTING AND CREATING NEW COMMUNITIES WHICH REDUCE GREENHOUSE GAS EMISSIONS AND DO NOT COMPROMISE THE NEEDS OF FUTURE GENERATIONS, BY AMONG OTHER MEANS ENCOURAGING BROAD BASED PUBLIC INVOLVEMENT IN DEVELOPING AND IMPLEMENTING A COMMUNITY PLAN AND ENSURING THE GOVERNANCE STRUCTURE IS ADEQUATE TO SUSTAIN ITS IMPLEMENTATION.

3. BEFORE MAKING ANY COMMITMENT, INCLUDING ENTERING INTO AN AGREEMENT OR INCURRING ANY INDEBTEDNESS FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, OR FINANCING ANY PROJECT COVERED BY THE PROVISIONS OF THIS ARTICLE, THE CHIEF EXECUTIVE OFFICER OF A STATE INFRASTRUCTURE AGENCY SHALL ATTEST IN A WRITTEN SMART GROWTH IMPACT STATEMENT THAT THE PROJECT, TO THE EXTENT PRACTICABLE, MEETS THE RELEVANT CRITERIA SET FORTH IN SUBDIVISION TWO OF THIS SECTION, UNLESS IN ANY RESPECT THE PROJECT DOES NOT MEET SUCH CRITERIA OR COMPLIANCE IS CONSIDERED TO BE IMPRACTICABLE, WHICH SHALL BE DETAILED IN A STATEMENT OF JUSTIFICATION.

4. NOTHING IN THIS SECTION SHALL CONTRAVENE ANY FEDERAL LAW GOVERNING THE EXPENDITURE OF DISBURSEMENT OF FEDERAL INFRASTRUCTURE FUNDING ADMINISTERED BY THE STATE.

S 6-0109. SMART GROWTH ADVISORY COMMITTEES.

THE CHIEF EXECUTIVE OFFICER OF EACH STATE INFRASTRUCTURE AGENCY SHALL CREATE A SMART GROWTH ADVISORY COMMITTEE TO ADVISE THE AGENCY REGARDING THE AGENCIES' POLICIES, PROGRAMS AND PROJECTS WITH REGARD TO THEIR COMPLIANCE WITH THE STATE SMART GROWTH PUBLIC INFRASTRUCTURE CRITERIA. SUCH COMMITTEES SHALL CONSIST OF APPROPRIATE AGENCY PERSONNEL DESIGNATED BY THE CHIEF EXECUTIVE OFFICER TO CONDUCT THE EVALUATION REQUIRED BY SECTION 6-0107 OF THIS ARTICLE. SUCH COMMITTEES SHALL SOLICIT INPUT FROM AND CONSULT WITH VARIOUS REPRESENTATIVES OF AFFECTED COMMUNITIES AND ORGANIZATIONS WITHIN THOSE COMMUNITIES, AND SHALL GIVE CONSIDERATION TO THE LOCAL AND ENVIRONMENTAL INTERESTS AFFECTED BY THE ACTIVITIES OF THE AGENCY OR PROJECTS PLANNED, APPROVED OR FINANCED THROUGH SUCH AGENCY.

S 6-0111. PRIVATE RIGHT OF ACTION.

NOTHING CONTAINED IN THIS ARTICLE OR IN THE ADMINISTRATION OR APPLICATION HEREOF SHALL BE CONSTRUED TO CREATE ANY PRIVATE RIGHT OF ACTION ON THE PART OF ANY PERSON, FIRM OR CORPORATION AGAINST THE STATE OF NEW YORK OR ANY STATE INFRASTRUCTURE AGENCY AS DEFINED IN SUBDIVISION TWO OF SECTION 6-0103 OF THIS ARTICLE.

S 2. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that this act shall not apply to infrastructure projects undertaken or approved by the infrastructure agencies prior to the date on which this act shall have become a law.