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

7510--A

2011-2012 Regular Sessions

I N A S S E M B L Y

May 6, 2011

Introduced by M. of A. BRENNAN, MAGNARELLI, JAFFEE, BRONSON -- (at request of the State Comptroller) -- read once and referred to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the limited liability company law and the not-for-profit corporation law, in relation to the purposes, powers and duties of limited liability companies, and local development corporations and other not-for-profit corporations; and to amend the local finance law, in relation to loans of credit and the exclusivity of such law

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

Section 1. Section 102 of the limited liability company law is amended by adding a new subdivision (r-1) to read as follows:

(R-1) "MUNICIPALITY" MEANS A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, COMMUNITY COLLEGE, PUBLIC LIBRARY OR LIBRARY DISTRICT, DISTRICT CORPORATION, TOWN OR COUNTY IMPROVEMENT DISTRICT, OR OTHER SPECIAL DISTRICT ESTABLISHED FOR THE PURPOSE OF CARRYING ON, PERFORMING OR FINANCING ONE OR MORE IMPROVEMENTS OR SERVICES FOR BENEFITED PROPERTIES OR PROPERTY OWNERS WITHIN SUCH SPECIAL DISTRICT.

S 2. Section 201 of the limited liability company law is amended to read as follows:

S 201. Purpose. A limited liability company may be formed under this chapter for any lawful business purpose or purposes except: (A) to do in this state any business for which another statute specifically requires some other business entity or natural person to be formed or used for such business; OR (B) TO FINANCE DIRECTLY OR INDIRECTLY OVER A PERIOD OF

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

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TIME A MUNICIPALITY'S OPERATIONS OR THE ACQUISITION OR IMPROVEMENT OF AN ASSET BY OR FOR THE USE OF A MUNICIPALITY.

S 3. The limited liability company law is amended by adding a new section 202-a to read as follows:

S 202-A. LIMITATION ON POWERS. NOTWITHSTANDING THE PROVISIONS OF SECTION TWO HUNDRED TWO OF THIS ARTICLE, A LIMITED LIABILITY COMPANY SHALL NOT PARTICIPATE IN ANY TRANSACTION OR SERIES OF RELATED TRANSACTIONS INVOLVING THE PAYMENT OF MONEY OVER A PERIOD OF TIME BY OR ON BEHALF OF A MUNICIPALITY LOCATED IN THIS STATE AND HAVING AS A PURPOSE THE DIRECT OR INDIRECT FINANCING OF THE MUNICIPALITY'S OPERATIONS OR THE ACQUISITION OR IMPROVEMENT OF AN ASSET BY OR FOR THE USE OF THE MUNICIPALITY. PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL PROHIBIT A LIMITED LIABILITY COMPANY FROM ENTERING INTO A TRUE LEASE WITH A MUNICIPALITY, ENTERING INTO AN INSTALLMENT PURCHASE CONTRACT PURSUANT TO SECTION ONE HUNDRED NINE-B OF THE GENERAL MUNICIPAL LAW OR PURCHASING BONDS OR NOTES ISSUED PURSUANT TO THE LOCAL FINANCE LAW.

S 4. Subdivision 1 of paragraph a of section 101.00 of the local finance law, as amended by chapter 200 of the laws of 1960, is amended to read as follows:

1. Give or loan its credit to or in aid of any individual, or public or private corporation or association, or private undertaking, INCLUDING, BUT NOT LIMITED TO, GUARANTEEING OR ASSUMING THE INDEBTEDNESS OR OBLIGATIONS OF ANY NOT-FOR-PROFIT CORPORATION OR LIMITED LIABILITY COMPANY FORMED BY, ON BEHALF OF, FOR THE BENEFIT OF, OR UNDER THE CONTROL OF THE MUNICIPALITY, SCHOOL DISTRICT OR DISTRICT CORPORATION, or

S 5. Section 176.00 of the local finance law, as amended by chapter 837 of the laws of 1945, is amended to read as follows:

S 176.00 Local finance law to be the exclusive law. A. Except as otherwise provided in this article, all statutes, local laws, ordinances, rules and regulations, insofar as they relate to the matters herein contained, are hereby superseded, it being the legislative intent that this chapter shall constitute the exclusive law on such matters.

B. UNLESS EXPRESSLY AND SPECIFICALLY OTHERWISE PROVIDED IN ANY OTHER GENERAL LAW OR IN A SPECIAL LAW, THE PROVISIONS OF THIS CHAPTER SHALL BE THE EXCLUSIVE LAW GOVERNING THE MANNER IN WHICH MUNICIPALITIES, SCHOOL DISTRICTS AND DISTRICT CORPORATIONS FINANCE OVER A PERIOD OF TIME THEIR OPERATIONS AND THE ACQUISITION OR IMPROVEMENT OF AN ASSET BY OR FOR THE USE OF A MUNICIPALITY, SCHOOL DISTRICT OR DISTRICT CORPORATION.

S 6. Paragraph (a) of section 102 of the not-for-profit corporation law is amended by adding a new subparagraph 19 to read as follows:

(19) "MUNICIPALITY" MEANS A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, COMMUNITY COLLEGE, PUBLIC LIBRARY OR LIBRARY DISTRICT, DISTRICT CORPORATION, TOWN OR COUNTY IMPROVEMENT DISTRICT, OR OTHER SPECIAL DISTRICT ESTABLISHED FOR THE PURPOSE OF CARRYING ON, PERFORMING OR FINANCING ONE OR MORE IMPROVEMENTS OR SERVICES FOR BENEFITED PROPERTIES OR PROPERTY OWNERS WITHIN SUCH SPECIAL DISTRICT.

S 7. Section 204 of the not-for-profit corporation law is amended to read as follows:

S 204. Limitation on activities.

Notwithstanding any other provision of this chapter or any other general law, a corporation of any type or kind to which this chapter applies shall: (A) conduct no activities for pecuniary profit or financial gain, whether or not in furtherance of its corporate purposes, except to the extent that such activity supports its other lawful activities then being conducted; AND (B) NOT PARTICIPATE IN ANY TRANSACTION

OR SERIES OF RELATED TRANSACTIONS INVOLVING THE PAYMENT OF MONEY OVER A PERIOD OF TIME BY OR ON BEHALF OF A MUNICIPALITY AND HAVING AS A PURPOSE THE DIRECT OR INDIRECT FINANCING OF THE MUNICIPALITY'S OPERATIONS, OR THE ACQUISITION OR IMPROVEMENT OF AN ASSET BY OR FOR THE USE OF THE MUNICIPALITY, PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL PROHIBIT SUCH A CORPORATION FROM ENTERING INTO A TRUE LEASE WITH A MUNICIPALITY OR PURCHASING BONDS OR NOTES ISSUED PURSUANT TO THE LOCAL FINANCE LAW.

S 8. Paragraphs (a), (c), (d) and (i) of section 1411 of the not-for-profit corporation law, paragraph (a) as amended by chapter 847 of the laws of 1970, are amended and a new paragraph (d-1) is added to read as follows:

(a) Purposes.

This section shall provide an additional and alternate method of incorporation or reincorporation of not-for-profit corporations for any of the purposes set forth in this paragraph [and shall not be deemed to alter, impair or diminish the purposes, rights, powers or privileges of any corporation heretofore or hereafter incorporated under this section or under the stock or business corporation laws]. Corporations may be incorporated or reincorporated under this section as not-for-profit local development corporations operated for the exclusively charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest, and any one or more counties, cities, towns or villages of the state, or any combination thereof, or the New York job development authority in exercising its power under the public authorities law to encourage the organization of local development corporations, may cause such corporations to be incorporated by public officers or private individuals or reincorporated upon compliance with the requirements of this section, and it is hereby found, determined and declared that in carrying out said purposes and in exercising the powers conferred by paragraph (b) such corporations will be performing an essential governmental function.

(c) Powers.

In furtherance of its purposes set forth in paragraph (a) but not for any other purposes, a local development corporation incorporated or reincorporated under this section shall have the following powers: to construct, acquire, rehabilitate and improve for use by others industrial or manufacturing plants in the territory in which its operations are principally to be conducted, to assist financially in such construction, acquisition, rehabilitation and improvement, to maintain such plants for others in such territory, to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect thereto, to acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein, to borrow money and to issue negotiable bonds, notes and other obligations therefor, and notwithstanding section 510 (Disposition of all or substantially all assets) without leave of the court, to sell, lease, mortgage or otherwise dispose of or encumber any such plants or any of its real or personal property or any interest therein upon such

terms as it may determine and, in connection with loans from the New York job development authority, to enter into covenants and agreements and to comply with all the terms, conditions and provisions thereof, and otherwise to carry out its corporate purposes and to foster and encourage the location or expansion of industrial or manufacturing plants in the territory in which the operations of such corporation are principally to be conducted, provided, however, that no such corporation shall: (1) attempt to influence legislation by propaganda or otherwise, or participate or intervene, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office; (2) PARTICIPATE IN ANY TRANSACTION OR SERIES OF RELATED TRANSACTIONS INVOLVING THE PAYMENT OF MONEY OVER A PERIOD OF TIME BY OR ON BEHALF OF A MUNICIPALITY AND HAVING AS A PURPOSE THE DIRECT OR INDIRECT FINANCING OF THE MUNICIPALITY'S OPERATIONS, OR THE ACQUISITION OR IMPROVEMENT OF AN ASSET BY OR FOR THE USE OF THE MUNICIPALITY, PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL PROHIBIT A LOCAL DEVELOPMENT CORPORATION FROM ENTERING INTO A TRUE LEASE WITH A MUNICIPALITY OR PURCHASING BONDS OR NOTES ISSUED PURSUANT TO THE LOCAL FINANCE LAW; AND (3) IN THE CASE OF A LOCAL DEVELOPMENT CORPORATION, THE INCORPORATION OF WHICH WAS CAUSED BY A COUNTY, CITY, TOWN OR VILLAGE, PROVIDE COMPENSATION TO A PERSON WHO SERVES AS A DIRECTOR, OFFICER OR EMPLOYEE OF SUCH CORPORATION WHEN THE PERSON SERVES OR HAS SERVED WITHIN THE PREVIOUS TWO YEARS AS AN OFFICER OR EMPLOYEE OF SUCH COUNTY, CITY, TOWN OR VILLAGE.

(d) Purchase or lease of real property owned by a county, city, town or village.

(1) The local legislative body of a county, city, town or village [or, if there is a board of estimate in a city, then the board of estimate,] may by resolution determine that specifically described real property owned by the county, city, town or village is not required for use by such county, city, town or village and authorize the county, city, town or village to sell or lease such real property to a local development corporation incorporated or reincorporated under this article; provided, however, that: (I) title to such land be not declared inalienable as a forest preserve or a parkland; AND (II) THAT NO SUCH SALE OR LEASE SHALL HAVE AS A PURPOSE THE DIRECT OR INDIRECT FINANCING OVER A PERIOD OF TIME OF THE OPERATIONS OF THE COUNTY, CITY, TOWN OR VILLAGE, OR THE ACQUISITION OR IMPROVEMENT OF AN ASSET BY OR FOR THE USE OF THE COUNTY, CITY, TOWN OR VILLAGE.

(2) Notwithstanding the provisions of any general, special or local law, charter or ordinance to the contrary, such sale or lease may be made without appraisal, public notice, (except as provided in subparagraph (4)) or public bidding for [such price or rental] FAIR AND ADEQUATE CONSIDERATION and upon such OTHER terms as may be agreed upon between the county, city, town or village and said local development corporation; provided, however, that in case of a lease the term may not exceed ninety-nine years and provided, further, that in cities having a population of one million or more, no such sale or lease shall be made without the approval of a majority of the members of the borough [improvement] board of the borough in which such real property is located.

(3) Before any sale or lease to a local development corporation incorporated or reincorporated under this article shall be authorized, a public hearing shall be held by the local legislative body[, or by the board of estimate, as the case may be,] to consider the proposed sale or lease.

(4) Notice of such hearing shall be published at least ten days before the date set for the hearing in such publication and in such manner as may be designated by the local legislative body[, or the board of estimate as the case may be]. SUCH NOTICE SHALL INCLUDE A DESCRIPTION OF THE REAL PROPERTY PROPOSED TO BE SOLD OR LEASED, AND A STATEMENT OF (I) THE ESTIMATED FAIR MARKET VALUE OF THE REAL PROPERTY PROPOSED TO BE SOLD OR LEASED, (II) THE CONSIDERATION TO BE RECEIVED BY THE COUNTY, CITY, TOWN OR VILLAGE ON ACCOUNT OF SUCH SALE OR LEASE, AND (III) A STATEMENT OF THE INTENDED USE OR DISPOSITION OF SUCH REAL PROPERTY BY THE LOCAL DEVELOPMENT CORPORATION.

(5) A local development corporation, incorporated or reincorporated under this section, which purchases or leases real property from a county, city, town or village, shall not, without the written approval of the county, city, town or village, use such real property for any purpose except the purposes set forth in the certificate of incorporation or reincorporation of said local development corporation. In the event such real property is used in violation of the restrictions of this paragraph, the attorney-general may bring an action or special proceeding to enjoin the unauthorized use.

(D-1) CONTRACTS WITH MUNICIPALITIES.

ANY CONTRACT OR OTHER AGREEMENT BETWEEN A LOCAL DEVELOPMENT CORPORATION AND A MUNICIPALITY SHALL: (I) PROVIDE FOR THE MUNICIPALITY TO RECEIVE FAIR AND ADEQUATE CONSIDERATION, (II) BE SUBJECT TO THE REQUIREMENTS OF ARTICLE FIVE-A OF THE GENERAL MUNICIPAL LAW, (III) EXCEPT FOR A REAL PROPERTY LEASE AGREEMENT, HAVE A TERM NOT TO EXCEED FIVE YEARS, SUBJECT TO ONE OR MORE RENEWALS FOR A TERM NOT TO EXCEED FIVE YEARS UPON THE MUTUAL CONSENT OF THE PARTIES, AND (IV) BE MADE FOR A PROPER MUNICIPAL PURPOSE, WHICH SHALL NOT INCLUDE THE DIRECT OR INDIRECT FINANCING OVER A PERIOD OF TIME OF THE MUNICIPALITY'S OPERATIONS OR THE ACQUISITION OR IMPROVEMENT OF AN ASSET BY OR FOR THE USE OF THE MUNICIPALITY.

(i) Effect of section.

Corporations incorporated or reincorporated under this section shall be organized and operated exclusively for the purposes set forth in paragraph (a), shall have, in addition to the powers otherwise conferred by law, the powers conferred by paragraph (c) and shall be subject to all the restrictions and limitations imposed by [paragraph] PARAGRAPHS (C), (D), (D-1), (e) and [paragraph] (g). In so far as the provisions of this section are inconsistent with the provisions of any other law, general or special, the provisions of this section shall be controlling as to corporations incorporated or reincorporated hereunder.

S 9. This act shall take effect immediately and shall apply to any transaction occurring on or after such effective date.