

3724--A

2011-2012 Regular Sessions

I N S E N A T E

March 2, 2011

Introduced by Sen. ADAMS -- 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 -- 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:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "food retail establishment subsidization for healthy communities
3 (FRESH Communities) act".
4 S 2. Legislative intent. The legislature finds that the lack of access
5 to fresh foods is a problem of growing concern in many communities
6 across the state. Substantial increases in urban land values and rents,
7 limited access to financing and other economic pressures have left many
8 lower-income residents in urban and rural areas underserved by supermar-
9 kets and other food retail establishments. The resulting lack of access
10 to a variety of fresh food retailers makes it more difficult and expen-
11 sive for these residents to maintain a nutritionally balanced diet and
12 leads to increased public health costs, dilutes the value of public
13 assistance for food purchases, leads to greater travel times and energy
14 expenditures to obtain fresh food, and deprives the state's farmers of
15 markets for their products. Providing access to financial assistance for
16 urban and rural supermarkets in underserved areas will remedy these
17 adverse conditions, create employment opportunities and help to revital-
18 ize and stabilize currently underserved neighborhoods.

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

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1 S 3. Paragraph (m) of subdivision 1 of section 16-m of section 1 of
2 chapter 174 of the laws of 1968, constituting the New York state urban
3 development corporation act, as added by chapter 467 of the laws of
4 2011, is amended and a new paragraph (n) is added to read as follows:

5 (m) Assistance to businesses that conduct basic, applied or transla-
6 tional research that leads to the development of products that improve
7 human health or agriculture and that require approval by the federal
8 food and drug administration, in order to create or expand facilities,
9 in accordance with good manufacturing practice regulations, that will
10 create or retain more than fifty jobs. For purposes of this paragraph,
11 good manufacturing practice regulations refers to those regulations
12 promulgated by the United States Food and Drug Administration under the
13 authority of the Federal Food, Drug and Cosmetic Act[.]; AND

14 (N) LOANS, LOAN GUARANTEES, INTEREST SUBSIDIES AND GRANTS TO BUSI-
15 NESSES, MUNICIPALITIES, NOT-FOR-PROFIT CORPORATIONS OR LOCAL DEVELOPMENT
16 CORPORATIONS FOR THE PURPOSE OF ATTRACTING, MAINTAINING OR PERMITTING
17 THE EXPANSION OF FOOD RETAIL ESTABLISHMENTS IN UNDERSERVED AREAS. FOR
18 PURPOSES OF THIS PARAGRAPH, "UNDERSERVED AREAS" SHALL INCLUDE LOW OR
19 MODERATE-INCOME CENSUS TRACTS, AREAS OF BELOW AVERAGE SUPERMARKET DENSI-
20 TY OR HAVING A SUPERMARKET CUSTOMER BASE WITH MORE THAN FIFTY PERCENT
21 LIVING IN LOW-INCOME CENSUS TRACTS, OR OTHER AREAS DEMONSTRATED TO HAVE
22 SIGNIFICANT ACCESS LIMITATIONS DUE TO TRAVEL DISTANCE, AS DETERMINED BY
23 THE CORPORATION, AND "FOOD RETAIL ESTABLISHMENTS" SHALL INCLUDE SUPER-
24 MARKETS AND OTHER GROCERY RETAILERS THAT OPERATE ON A SELF-SERVICE BASIS
25 AND SELL A MINIMUM PERCENTAGE OF PRODUCE, MEAT, POULTRY, SEAFOOD, BAKED
26 GOODS AND/OR DAIRY PRODUCTS AND WHICH:

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

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

31 (C) DO NOT CHARGE A MEMBERSHIP FEE;

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

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

40 S 4. Section 210 of the tax law is amended by adding a new subdivision
41 45 to read as follows:

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

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

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

54 (D) CARRYOVER. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXA-
55 BLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE
56 HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVI-

1 SION ONE OF THIS SECTION. PROVIDED, HOWEVER, IF THE AMOUNT OF CREDIT
2 ALLOWABLE UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO
3 SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR
4 MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND MAY BE DEDUCTED
5 FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

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

9 (XXXIV) RETAIL FOOD	AMOUNT OF CREDIT
10 ESTABLISHMENT TAX CREDIT UNDER	UNDER SUBDIVISION
11 SUBSECTION (K-1)	FORTY-FIVE OF SECTION
12	TWO HUNDRED TEN

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

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

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

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

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

37 2. that the credit established by sections four, five and six of this
38 act shall apply to taxable years beginning on or after January 1, 2012.