STATE OF NEW YORK

2568

2019-2020 Regular Sessions

IN ASSEMBLY

January 23, 2019

Introduced by M. of A. RODRIGUEZ, BICHOTTE, BUCHWALD, MOSLEY, CROUCH -- Multi-Sponsored by -- M. of A. THIELE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the economic development law, in relation to establishing infrastructure financing districts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The economic development law is amended by adding a new article 23 to read as follows:

ARTICLE 23

INFRASTRUCTURE FINANCING DISTRICTS

Section 450. Definitions.
451. Revenue usage.
452. Permitted projects.
453. Additional facilities or services.
454. District designation challenges.
455. District establishment.
456. Infrastructure plan.
457. Public hearing.
458. Taxation.
459. Bond issuance.

§ 450. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Affected taxing entity" means any governmental taxing agency which levied or had levied on its behalf a property tax on all or a portion of the property located in the proposed district in the fiscal year prior to the designation of such district.

2. "District" means an infrastructure financing district.

3. "Infrastructure financing district" means a legally constituted governmental entity established pursuant to this article for the sole purpose of financing public facilities.

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

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4. "Landowner" or "owner of land" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of the land by a municipality. The municipality has no obligation to obtain other information as to the ownership of land, and its determination of ownership shall be final and conclusive for the purposes of this article. A public agency is not a landowner or owner of land for purposes of this article, unless the public agency owns all of the land to be included within the proposed district.

§ 451. Revenue usage. 1. The revenues available pursuant to this article may be used directly for work allowed pursuant to section four hundred fifty-two of this article, may be accumulated for a period not to exceed five years to provide a fund for that work, may be pledged to pay the principal of, and interest on, bonds issued pursuant to this article, or may be pledged to pay the principal of, and interest on, bonds the proceeds of which will be used entirely for allowable purposes of the district. The revenues of the district may also be committed to paying for any completed public facility acquired pursuant to section four hundred fifty-two of this article over a period of time, including the payment of a rate of interest not to exceed the bond buyer index rate on the day that the agreement to repay is entered into by the city or county.

2. A municipality may enter into an agreement with any affected taxing entity providing for the construction of, or assistance in, financing public facilities.

§ 452. Permitted projects. 1. A district may finance (a) the purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or other tangible property with an estimated useful life of fifteen years or longer which satisfies the requirements of subdivision two of this section, (b) may finance planning and design work which is directly related to the purchase, construction, expansion, or rehabilitation of that property, and (c) the costs described in subdivision three of section four hundred fifty-eight of this article. A district may only finance the purchase of facilities for which construction has been completed, as determined by the municipality. The facilities need not be physically located within the boundaries of the district. A district may not finance routine maintenance, repair work, or the costs of ongoing operation or providing services of any kind.

2. The district shall finance only public capital facilities of communitywide significance, which provide significant benefits to an area larger than the area of the district, including, but not limited to, all of the following:

(a) Highways, interchanges, ramps and bridges, arterial streets, parking facilities, and transit facilities.

(b) Sewage treatment and water reclamation plants and interceptor pipes.

(c) Facilities for the collection and treatment of water for urban uses.

(d) Flood control levees and dams, retention basins, and drainage channels.

(e) Child care facilities.

(f) Libraries.

(g) Parks, recreational facilities, and open space.

(h) Facilities for the transfer and disposal of solid waste, including transfer stations and vehicles.

3. In addition to the projects authorized herein, any infrastructure financing district may finance public capital facilities or projects that include broadband.

For purposes of this section, "broadband" means communications network facilities that enable high-speed internet access.

§ 453. Additional facilities or services. 1. A district may finance only the facilities or services authorized in this article to the extent that the facilities or services are in addition to those provided in the territory of the district before the district was created. The additional facilities or services may not supplant facilities or services already available within that territory when the district was created but may supplement those facilities and services as needed to serve new developments.

2. A district may include areas that are not contiguous.

3. Any debt or obligation of a district shall be subordinate to all prior enforceable obligations.

§ 454. District designation challenges. Any action or proceeding to attack, review, set aside, void, or annul the creation of a district, adoption of an infrastructure financing plan, including a division of taxes thereunder, the validity of bond issuance or an election pursuant to this article shall be commenced within thirty days after the enactment of the ordinance creating the district.

§ 455. District establishment. A municipality may designate one or more proposed infrastructure financing districts pursuant to this article. Proceedings for the establishment of a district shall be instituted by the adoption of a resolution of intention to establish the proposed district and shall do all of the following:

1. State that an infrastructure financing district is proposed to be established under the terms of this article and describe the boundaries of the proposed district, which may be accomplished by reference to a map on file in the office of the clerk of the city or county that is proposing to establish the district.

2. State the type of public facilities proposed to be financed by the district. The district may only finance public facilities authorized by section four hundred fifty-two of this article.

3. State that incremental property tax revenue from the city or county and some or all affected taxing entities within the district may be used to finance these public facilities.

4. Fix a time and place for a public hearing on the proposal.

5. The municipality shall direct the clerk to mail a copy of the resolution of intention to create the district to each owner of land within the district and to each affected taxing entity.

6. After adopting the resolution pursuant to this section, the municipality shall designate the appropriate municipal official to prepare an infrastructure plan pursuant to section four hundred fifty-six of this article.

§ 456. Infrastructure plan. After receipt of a copy of the resolution of intention to establish a district, the official designated pursuant to subdivision six of section four hundred fifty-five of this article shall prepare a proposed infrastructure financing plan. The infrastructure financing plan shall be consistent with the general plan of the city or county within which the district is located and shall include all of the following:

1. A map and legal description of the proposed district, which may include all or a portion of the district designated by the municipality in its resolution of intention.

2. A description of the public facilities required to serve the development proposed in the area of the district including those to be provided by the private sector, those to be provided by governmental entities without assistance under this article, those public improvements and facilities to be financed with assistance from the proposed district, and those to be provided jointly. The description shall include the proposed location, timing, and costs of the public improvements and facilities.

3. A finding that the public facilities are of communitywide significance and provide significant benefits to an area larger than the area of the district.

4. A financing section, which shall contain all of the following information:

(a) A specification of the maximum portion of the incremental tax revenue of the city or county and of each affected taxing entity proposed to be committed to the district for each year during which the district will receive incremental tax revenue. The portion need not be the same for all affected taxing entities. The portion may change over time.

(b) A projection of the amount of tax revenues expected to be received by the district in each year during which the district will receive tax revenues, including an estimate of the amount of tax revenues attributable to each affected tax entity for each year.

(c) A plan for financing the public facilities to be assisted by the district, including a detailed description of any intention to incur debt.

(d) A limit on the total number of dollars of taxes which may be allocated to the district pursuant to the plan.

(e) A date on which the district will cease to exist, by which time all tax allocations to the district will end. The date shall not be more than thirty years from the date on which the ordinance forming the district is adopted.

(f) An analysis of the costs to the city or county of providing facilities and services to the area of the district while the area is being developed and after the area is developed. The plan shall also include an analysis of the tax, fee, charge, and other revenues expected to be received by the city or county as a result of expected development in the area of the district.

(g) An analysis of the projected fiscal impact on the district and the associated development upon each affected taxing entity.

(h) A plan for financing any potential costs that may be incurred by reimbursing a developer of a project that is located entirely within the boundaries of that district.

§ 457. Public hearing. 1. The municipality shall conduct a public hearing prior to adopting the proposed infrastructure financing plan. The public hearing shall be called no sooner than sixty days after the plan has been sent to each affected taxing entity. In addition to the notice given to landowners and affected taxing entities, notice of the public hearing shall be given by publication not less than once a week for four successive weeks in a newspaper of general circulation published in the city or county in which the proposed district is located. The notice shall state that the district will be used to finance public works, briefly describe the public works, briefly describe the proposed financial arrangements, including the proposed commitment of incremental tax revenue, describe the boundaries of the proposed district and state the day, hour, and place when and where any

persons having any objections to the proposed infrastructure financing plan, or the regularity of any of the prior proceedings, may appear before the municipality and object to the adoption of the proposed plan by the municipality.

2. At the hour set in the required notices, the municipality shall proceed to hear and pass upon all written and oral objections. The hearing may be continued from time to time. The municipality shall consider the recommendations, if any, of affected taxing entities, and all evidence and testimony for and against the adoption of the plan. The municipality may modify the plan by eliminating or reducing the size and cost of proposed public works, by reducing the amount of proposed debt, or by reducing the portion, amount, or duration of incremental tax revenues to be committed to the district.

3. Nothing in this section shall be construed to prevent the municipality from amending its infrastructure financing plan and adopting a resolution proposing formation of the infrastructure financing district without allocation of the tax revenues of any affected taxing entity which has not approved the infrastructure financing plan by resolution of the governing body of the affected taxing entity.

4. At the conclusion of the hearing, the municipality may adopt a resolution proposing adoption of the infrastructure financing plan, as modified, and formation of the infrastructure financing district, or it may abandon the proceedings. If the municipality adopts a resolution proposing formation of the district, it shall then submit the proposal to create the district to the qualified electors of the proposed district in the next general election or in a special election to be held, notwithstanding any other requirement at least ninety days, but not more than one hundred eighty days, following the adoption of the resolution of formation. The municipality shall provide the resolution of formation, a certified map of sufficient scale and clarity to show the boundaries of the district, and a sufficient description to allow the election official to determine the boundaries of the district to the official conducting the election within three business days after the adoption of the resolution of formation. The assessor's parcel numbers for the land within the district shall be included if it is a landowner election or the district does not conform to an existing district's boundaries and if requested by the official conducting the election. If the election is to be held less than one hundred twenty-five days following the adoption of the resolution of formation, the concurrence of the election official conducting the election shall be required. However, any time limit specified by this section or requirement pertaining to the conduct of the election may be waived with the unanimous consent of the qualified electors of the proposed district and the concurrence of the election official conducting the election.

5. After the canvass of returns of any election pursuant to this section, the municipality may, by ordinance, adopt the infrastructure financing plan and create the district with full force and effect of law, if fifty-five percent of the votes upon the question of creating the district are in favor of crating the district.

6. After the canvass of returns of any election conducted pursuant to this section, the municipality shall take no further action with respect to the proposed infrastructure financing district for one year from the date of the election if the question of creating the district fails to receive approval by fifty-five percent of the votes cast upon the question.

§ 458. Taxation. Any infrastructure financing plan may contain a provision that taxes, if any, levied upon taxable property in the area included within the infrastructure financing district each year by or for the benefit of the state of New York, or any affected taxing entity after the effective date of the ordinance adopted pursuant to subdivision five of section four hundred fifty-seven of this article to create the district, shall be divided as follows:

1. That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of the affected taxing entities upon the total sum of the assessed value of the taxable property in the district as shown upon the assessment roll used in connection with the taxation of the property by the affected taxing entity, last equalized prior to the effective date of the ordinance adopted pursuant to subdivision five of section four hundred fifty-seven of this article to create the district, shall be allocated to, and when collected shall be paid to, the respective affected taxing entities as taxes by or for the affected taxing entities on all other property are paid.

2. That portion of the levied taxes each year specified in the adopted infrastructure financing plan for the city or county and each affected taxing entity in excess of the amount specified in subdivision one of this section shall be allocated to, and when collected shall be paid into a special fund of, the district for all lawful purposes of the district. Unless and until the total assessed valuation of the taxable property in a district exceeds the total assessed value of the taxable property in the district as shown by the last equalized assessment roll referred to in subdivision one of this section, all of the taxes levied and collected upon the taxable property in the district shall be paid to the respective affected taxing entities. When the district ceases to exist pursuant to the adopted infrastructure financing plan, all moneys thereafter received from taxes upon the taxable property in the district shall be paid to the respective affected taxing entities as taxes on all other property are paid.

3. All costs incurred by a county in connection with the division of taxes pursuant to this section for a district shall be paid by that district.

§ 459. Bond issuance. 1. A municipality may, by majority vote, initiate proceedings to issue bonds pursuant to this article by adopting a resolution stating its intent to issue the bonds. Such resolution shall contain all of the following information:

(a) A description of the facilities to be financed with the proceeds of the proposed bond issued.

(b) The estimated cost of the facilities, the estimated cost of preparing and issuing the bonds, and the principal amount of the proposed bond issuance.

(c) The maximum interest rate and discount on the proposed bond issuance.

(d) The date of the election on the proposed bond issuance and the manner of holding the election.

(e) A determination of the amount of tax revenue available or estimated to be available, for the payment of the principal of, and interest on, the bonds.

(f) A finding that the amount necessary to pay the principal of, and interest on, the proposed bond issuance will be less than, or equal to, the amount determined pursuant to subdivision five of this section.

2. Such resolution shall be published once a day for at least seven successive days in a newspaper published in the city or county at least

six days a week, or at least once a week for two successive weeks in a newspaper published in the city or county less than six days a week.

If there are no newspapers meeting these criteria, the resolution shall be posted in three public places within the territory of the district for two succeeding weeks.

3. The municipality shall submit the proposal to issue the bonds to the voters who reside within the district. The election shall be conducted in the same manner as the election to create the district pursuant to section four hundred fifty-seven of this article and the two elections may be consolidated.

4. (a) The bonds may be issued if fifty-five percent of the voters voting on the proposition vote in favor of issuing the bonds.

(b) If the voters approve the issuance of the bonds as provided by paragraph (a), the municipality shall proceed with the issuance of the bonds by adopting a resolution which shall provide for all of the following:

(i) The issuance of the bonds in one or more series.

(ii) The principal amount of the bonds, which shall be consistent with the amount specified in paragraph (b) of subdivision one of this section.

(iii) The date the bonds will bear.

(iv) The date of maturity of the bonds.

(v) The denomination of the bonds.

(vi) The form of the bonds.

(vii) The manner of execution of the bonds.

(viii) The medium of payment in which the bonds are payable.

(ix) The place or manner of payment and any requirements for registration of the bonds.

(x) The terms of call or redemption, with or without premium.

5. If any proposition submitted to the voters pursuant to this article is defeated by the voters, the municipality shall not submit, or cause to be submitted, a similar proposition to the voters for at least one year after the first election.

6. The municipality may, by majority vote, provide for refunding of bonds issued pursuant to this article. However, refunding bonds shall not be issued if the total net interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds exceeds the total net interest cost to maturity on the bonds to be refunded. The municipality may not extend the time to maturity of the bonds.

7. The municipality or any person executing the bonds shall not be personally liable on the bonds by reason of their issuance. The bonds and other obligations of a district issued pursuant to this article are not a debt of the city, county, or state or of any of its political subdivisions, other than the district, and none of those entities, other than the district, shall be liable on the bonds and the bonds or obligations shall be payable exclusively from funds or properties of the district. The bonds shall contain a statement to this effect on their face. The bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.