STATE OF NEW YORK

5474--A

2023-2024 Regular Sessions

IN SENATE

March 6, 2023

Introduced by Sens. KENNEDY, BAILEY, COMRIE, GALLIVAN, HOYLMAN-SIGAL, MATTERA, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the economic development law, in relation to authorizing local municipalities to establish tourism improvement 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

TOURISM IMPROVEMENT DISTRICTS

Section 447. Definitions.
448. District plan.
449. Powers and duties.
450. Notice and hearing.
451. Establishment or extension of the district.
452. Publication, filing and judicial review.
453. Amendments to the district plan.
454. Expense of the district.
455. Expenditure of district funds.
456. District management association.
457. Dissolution.
458. Severability.

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

1. "Assessment" means a levy imposed on behalf of the district on a business as provided in the district plan.

2. "Business" shall be defined as a hotel, motel, inn, bed and breakfast or any lodging facility that provides common hotel services,

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

LBD02937-02-3

including housekeeping services and food services. "Business" shall not include free standing single family dwelling units, including but not limited to, bungalows, cottages, or cabins.

3. "Benefited business" means businesses located within a district, which benefit from district improvements based on a rational nexus test. Districts may include one or more types of businesses. Businesses need not profit equally to be considered to have benefited. Assessed businesses located in a tourism improvement district are not required to be contiguous.

4. "Business assessment" means any assessment made pursuant to this article upon a business.

5. "Business owner" means any person recognized by a municipality as the owner of the business.

6. "District" means a tourism improvement district established pursuant to this article, which may include an entire county or multiple counties provided that a district may not overlap in whole or in part with a city with a population of one million or more.

7. "District management association" means the association established pursuant to section four hundred fifty-six of this article.

8. "District plan" or "plan" means a proposal as described in section four hundred forty-eight of this article.

9. "Legislative body" means the local legislative body of a municipality empowered to adopt and amend local laws or ordinances.

10. "Municipality" means a county within the state of New York, except counties located within a city with a population of one million or more. In a district which includes more than one municipality, the municipality in which the district plan is filed shall be the lead municipality of the district. The county which shall serve as the lead municipality may not form a district within the territorial jurisdiction of another county without the consent of the legislative body of that county.

11. "Rational nexus" means the legal principle which requires that there is a rational benefit which accrues to any business owner assessed for said benefit in a district created pursuant to this article. All designated business owners within a designated district paying an assessment must benefit directly or indirectly from improvements provided by a district management association within the district, provided, however, that designated business owners need not benefit equally.

12. "Municipal clerk" means the clerk of the board of supervisors of the county legislature as appointed pursuant to section four hundred seventy-five of the county law.

§ 448. District plan. 1. The legislative body shall provide for the preparation of a district plan. The district plan shall contain the following:

(a) a map of the district;

(b) a description of the boundaries of the district proposed for establishment or extension in a manner sufficient to identify the lands included;

(c) the improvements and activities proposed and the appropriate projected cost thereof;

(d) the total estimated annual amount proposed to be expended for improvements, activities, maintenance, and operation;

(e) the proposed source or sources of financing;

(f) the proposed time for implementation and completion of the district plan;

(g) any proposed rules and regulations to be applicable to the district;

(h) identification of a new or an existing entity, agency, or nonprofit corporation, charged with promoting tourism in that region, as the district management association; and

(i) any other item or matter required to be incorporated therein by the legislative body.

2. (a) Every municipality shall be authorized to adopt a local law, subject to permissive referendum, providing that the provisions of this section shall be applicable to the establishment or extension of districts in the municipality.

(b) Every existing district previously formed is declared valid, effective, and in compliance with this article. Such existing districts are subject solely to the provisions of this article notwithstanding any provision of prior law.

§ 449. Powers and duties. 1. Upon establishment of a district pursuant to the provisions of this article, the legislative body shall have authority to exercise the following powers with respect to such district, subject to the provisions of this section:

(a) provide for activities and other additional services required for tourism promotion and enhancement of the district, whether or not in conjunction with improvements authorized by this article;

(b) provide for district improvements which will fund the promotion of tourism activities in the district including, but not limited to, the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more; and

(c) provide for the operation and maintenance of any district improvement.

2. (a) Notwithstanding any provision of law to the contrary, all rights or benefits, including terms and conditions of employment, and protection of civil service and collective bargaining status of all employees of a public employer shall be preserved and protected.

(b) Nothing in this article shall result in the: (i) displacement of any currently employed worker or loss of position, including partial displacement such as a reduction in the hours of non-overtime work, wages or employment benefits, or result in the impairment of existing collective bargaining agreements; (ii) transfer of existing duties and functions related to maintenance and operations currently performed by existing employees of a public employer to a contracting entity; or (iii) transfer of future duties and functions ordinarily performed by employees of a public employer to a contracting entity.

(c) Employees performing maintenance and operations of any district improvement serving in positions in newly created titles shall be assigned to the appropriate bargaining unit. Nothing contained in this article shall be construed to affect: (i) the existing rights of employees pursuant to an existing collective bargaining agreement; (ii) the existing representational relationships among employee organizations representing employees of public employers; or (iii) the bargaining relationships between public employers and such employee organizations.

3. After the establishment of a management district, the legislative body shall not decrease the level of publicly funded tourism promotion services in the management district existing prior to the creation of the district.

4. Assessments levied on businesses pursuant to this article shall be levied on the basis of the estimated benefit to the businesses within the tourism improvement district. The legislative body of the munici-

pality may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to subdivision one of this section. A municipality is authorized to form a district that levies assessments on businesses located in the municipality, including those located in a city, town and village.

5. A municipality shall be authorized to form a district that includes other municipalities.

6. The district plan shall be filed with the office of the municipal clerk. The establishment or extension of a district shall be based upon the district plan filed in the office of the municipal clerk. All district plans shall conform with the requirements of this article.

§ 450. Notice and hearing. 1. After the filing of the district plan in the office of the municipal clerk pursuant to section four hundred forty-nine of this article, the legislative body may adopt a resolution and shall enter the same in the minutes of its proceedings. This resolution shall contain a copy of the district plan, the fact that a district plan is on file in the municipal clerk's office for public inspection and the time when and the place where the legislative body will meet and hold a public hearing to hear all persons interested in the subject thereof.

2. The resolution shall also contain a statement that any assessed business owner, deemed benefited and therefore within the district, objecting to the plan shall file an objection at the office of the municipal clerk within thirty days of the conclusion of the hearing on forms made available by the clerk, and, further, that if business owners that shall pay more than fifty percent of the amount raised by the assessed businesses situated within the boundaries of the district proposed for establishment or extension, as shown upon the latest completed municipal business list, file their objections, the district will not be established or extended.

3. The legislative body shall cause a copy of the resolution or a summary thereof to be published at least once in the official paper or a newspaper in general circulation in the municipality, the first publication to be not less than ten nor more than thirty days before the day set for the hearing required by this section. In addition, not less than ten nor more than thirty days before the date set for the hearing, the legislative body shall cause a copy of the resolution or a summary thereof to be mailed to each owner of an assessed business within the proposed district at the address shown on the latest municipal business list. If the legislative body publishes or mails a summary of the resolution, such summary shall include the business address of the municipal clerk, a statement that copies of the resolution shall be made available free of charge to the public, the improvements, activities, or services proposed, the total estimated annual amount proposed to be expended for improvements, activities, maintenance and operation, and a statement indicating the rights of owners to object pursuant to subdivision two of this section.

4. The resolution may further state the place, other than the municipal clerk's office, where the district plan may be inspected in advance of the hearing, if the legislative body determines that, in the public interest, any additional place of inspection is necessary or desirable.

§ 451. Establishment or extension of the district. 1. Not earlier than thirty days after the conclusion of the last day of the public hearing held pursuant to section four hundred fifty of this article, the legislative body shall determine:

(a) whether the notice of hearing for all hearings required to be held was published and mailed as required by law and is otherwise sufficient;

(b) whether all the assessed businesses within the boundaries of the proposed district or extension will benefit from the establishment or extension of the district; and

(c) whether the establishment or extension of the district is in the public interest.

2. (a) If the legislative body shall determine the establishment or extension of the district is not in the public interest pursuant to paragraph (c) of subdivision one of this section, or if the requisite number of owners shall have filed their objections as provided in section four hundred fifty of this article, the legislative body shall adopt a resolution disapproving the establishment or extension of the district, stating the reasons for its determination and enter the same in the minutes of its proceedings. Thereafter no plan for the establishment or extension of a district to include any business proposed to be included in the disapproved district may be prepared as provided in section four hundred fifty of this article until the expiration of at least one year from the date of disapproval.

(b) If the legislative body shall find that notice was incorrectly or insufficiently given or that, except as otherwise provided in section four hundred forty-eight of this article, any assessed business within the boundaries of the proposed district or extension is not benefited thereby or that certain businesses benefited thereby had not been included therein, it shall call a further hearing at a definite place and time not less than ten nor more than thirty days after this determination. In the resolution calling such hearing, it shall specify the necessary changes, if any, to the boundaries of the proposed district or extension to be made in order that, except as otherwise provided in section four hundred forty-eight of this article, all of the businesses and only those businesses as deemed benefited shall be included within the boundaries of the proposed district or extension. Benefited businesses located in a district are not required to be contiguous. Notice of the further hearing shall be published and mailed in the manner provided in section four hundred fifty of this article, except that, where boundaries are to be altered, this notice shall also specify the manner in which it is proposed to alter the boundaries of the proposed district or extension. The further hearing shall be conducted in the same manner as the original hearing.

3. If and when the legislative body shall determine in the affirmative all of the questions set forth in subdivision one of this section, and provided that the requisite number of owners shall not have objected as provided in section four hundred fifty of this article, it may adopt a local law approving the establishment or extension of the district as the boundaries shall be finally determined and the construction of the improvement or providing of the activity or service in the district.

4. Upon the recommendation of the district management association and after a public hearing, the legislative body may adopt a local law at any time prior to or after the establishment of a district to change the method of assessment as set forth in the plan. Notice of such public hearing and a description of the proposed change shall be given in the manner set forth in section four hundred fifty of this article.

§ 452. Publication, filing and judicial review. 1. The municipal clerk shall cause a certified copy of the local law of the legislative body adopted pursuant to the provisions of this article establishing or extending any district, or increasing the maximum total amount proposed

to be expended for the improvement, activities, or additional services in any district or extension, or changing the method of assessment, or authorizing the district to incur debt to provide for additional improvements, activities, or services within the district, to be duly recorded in the municipal clerk's office within ten days after such local law becomes effective. When recorded this local law shall be presumptive evidence of the regularity of the proceedings for the establishment or extension of the district, of the proceedings instituted for the construction of any improvement and of all other actions taken in relation to it.

2. Within ten days after the local law becomes effective, the municipal clerk shall, in addition to any other filing required by law, cause a copy of the local law or a summary thereof to be published at least once in the official paper or newspaper of general circulation in the municipality.

3. This local law shall be final and conclusive unless a proceeding to review is commenced in accordance with this article. Any person aggrieved by any local law adopted pursuant to this article may seek judicial review of the local law in the manner provided by article seventy-eight of the civil practice law and rules, provided the proceeding is commenced within thirty days from the date of the publication of the copy or summary of the local law pursuant to subdivision two of this section. No review shall be had unless the petitioner shall give an undertaking approved by the supreme court, or a justice thereof, as to form, amount and sufficiency of sureties, that, in the event of failure to modify the local law he or she will pay to the municipality, all costs and expenses as are incurred by it on account of the proceedings, as shall be determined by the court. In the event that upon this review there shall be any modification by the court of the local law, the court shall direct the modification by judgment which shall be final and conclusive, and the municipal clerk shall cause the judgment to be recorded and filed in the same places and manner as was the local law which was modified.

§ 453. Amendments to the district plan. 1. At any time after the establishment or extension of a district pursuant to the provisions of this article, the district plan upon which the establishment or extension was based, may, upon the recommendation of the district management association, be amended by the legislative body after compliance with the procedures set forth in this article.

2. Amendments to the district plan which provide for changes to the improvements, activities, or services provided under the district plan may be adopted by the district management association and do not require actions by the legislative body.

3. Amendments to the district plan which provide for changes to the boundaries of the district or any change in the method of assessment upon which the business assessment is based may be adopted by local law of the legislative body, provided that the legislative body of the municipality shall, after a public hearing, determine that it is in the public interest to authorize such changes to the boundaries of the district or changes to the method of assessment. The legislative body shall give notice of the hearing by publication of a notice on the legislative body's website or in at least one newspaper having general circulation in the district specifying the time when and the place where the hearing will be held and stating any changes to the boundaries of the district, or any change in the method of assessment upon which the

business assessment is based. The notice shall be published once at least ten days prior to the date specified for the hearing.

4. Amendments to the district plan which provide for the district to incur indebtedness in order to provide for additional improvements or activities, or which provide an increase only in the amount to be expended annually for improvements, activities, services, maintenance and operation, or which provide for an increase in the total maximum amount to be expended for improvements or activities in the district, may be adopted by local law of the legislative body. Adoption of a local law of the legislative body regarding the amendments as provided in this paragraph requires that the legislative body shall, after a public hearing, determine that it is in the public interest to authorize the district to incur indebtedness to provide for additional improvements or activities, or to increase only in the amount to be expended annually, or to increase the maximum total amount to be expended for improvements or activities in the district. Notice of the hearing shall be published and mailed in the manner provided in section four hundred fifty of this article.

§ 454. Expense of the district. 1. The expense incurred in the construction or operation of any improvement, activities, or provision of additional services in a district pursuant to this article shall be financed in accordance with the district plan upon which the establishment or extension of the district was based. Activities or services for which district business owners are assessed pursuant to the plan shall be in addition to or an enhancement of those provided by the municipality prior to the establishment of the district. The expense and cost apportioned to benefited businesses in accordance with the plan shall be a business assessment upon each benefited business within the district.

2. The business assessment levied upon benefited businesses pursuant to this article shall be imposed as provided in the district plan.

3. Any municipality which has established a district pursuant to this article, may, for the purpose of providing funds for making capital improvements, within a district, issue and sell bonds or other municipal obligations as provided in the local finance law and other applicable laws and statutes. Principal and interest payments on these bonds or other municipal obligations may be made in whole or in part from the proceeds of business assessments imposed upon benefited businesses within the district.

§ 455. Expenditure of district funds. The proceeds of any business assessment imposed pursuant to this article shall be remitted to the district management association by the municipality within sixty days following the collection of assessments from assessed businesses. None of the proceeds collected pursuant to this article shall be used for any purposes other than those set forth in the district plan.

§ 456. District management association. 1. There shall be a district management association for each district established pursuant to the provisions of this article, which, if a non-profit corporation, shall pursuant to the not-for-profit corporation law have one or more classes or membership, voting or non-voting for the purpose of carrying out such activities as may be prescribed in the plan.

2. The board of directors of the association may include, but shall not be limited to, representatives of business owners within the district.

3. In addition to such other powers as are conferred on it by law, the district management association may make recommendations to the legisla-

tive body with respect to any matter involving or relating to the district.

§ 457. Dissolution. Any district established or extended pursuant to the provisions of this article, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be dissolved by resolution of the legislative body of the municipality, if the legislative body of the municipality finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district. It shall provide a notice of a hearing on disestablishment pursuant to section four hundred fifty of this article. Each year on the anniversary of formation of the district there shall be a thirty-day window where petitions of the business owners, or business owner representatives, that shall pay more than fifty percent of the total amount raised by all benefited businesses included in the boundaries of the district may petition to dissolve the district. The legislative body shall request and consider the recommendations of the district management association concerning any proposed dissolution, provided that if the association has not submitted recommendations to the legislative body within ninety days after request therefore, the legislative body shall adopt any such proposed dissolution without considering such recommendations. In the event of dissolution, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be spent in accordance with the district plan or shall be refunded to the assessed business owners by applying the same method and basis that was used to calculate the district assessments that were levied.

§ 458. Severability. If any provision of this article or the application thereof to any person or circumstance shall be adjudged invalid by any court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any provisions of this article or the application of any part thereof to any other person or circumstance and to this end the provisions of this article are hereby declared to be severable.

§ 2. This act shall take effect immediately.