

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.

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

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

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

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

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

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

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

22 9. "Legislative body" means the local legislative body of a munici-
23 pality empowered to adopt and amend local laws or ordinances.

24 10. "Municipality" means a county within the state of New York, except
25 counties located within a city with a population of one million or more.
26 In a district which includes more than one municipality, the munici-
27 pality in which the district plan is filed shall be the lead munici-
28 pality of the district. The county which shall serve as the lead munici-
29 pality may not form a district within the territorial jurisdiction of
30 another county without the consent of the legislative body of that coun-
31 ty.

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

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

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

46 (a) a map of the district;

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

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

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

54 (e) the proposed source or sources of financing;

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

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

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

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

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

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

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

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

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

27 (c) provide for the operation and maintenance of any district improve-
28 ment.

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

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

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

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

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

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

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

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

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

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

31 3. The legislative body shall cause a copy of the resolution or a
32 summary thereof to be published at least once in the official paper or a
33 newspaper in general circulation in the municipality, the first publica-
34 tion to be not less than ten nor more than thirty days before the day
35 set for the hearing required by this section. In addition, not less than
36 ten nor more than thirty days before the date set for the hearing, the
37 legislative body shall cause a copy of the resolution or a summary ther-
38 eof to be mailed to each owner of an assessed business within the
39 proposed district at the address shown on the latest municipal business
40 list. If the legislative body publishes or mails a summary of the resol-
41 ution, such summary shall include the business address of the municipal
42 clerk, a statement that copies of the resolution shall be made available
43 free of charge to the public, the improvements, activities, or services
44 proposed, the total estimated annual amount proposed to be expended for
45 improvements, activities, maintenance and operation, and a statement
46 indicating the rights of owners to object pursuant to subdivision two of
47 this section.

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

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

1 (a) whether the notice of hearing for all hearings required to be held
2 was published and mailed as required by law and is otherwise sufficient;
3 (b) whether all the assessed businesses within the boundaries of the
4 proposed district or extension will benefit from the establishment or
5 extension of the district; and

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

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

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

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

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

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

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

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

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

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

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

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

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

3 4. Amendments to the district plan which provide for the district to
4 incur indebtedness in order to provide for additional improvements or
5 activities, or which provide an increase only in the amount to be
6 expended annually for improvements, activities, services, maintenance
7 and operation, or which provide for an increase in the total maximum
8 amount to be expended for improvements or activities in the district,
9 may be adopted by local law of the legislative body. Adoption of a local
10 law of the legislative body regarding the amendments as provided in this
11 paragraph requires that the legislative body shall, after a public hear-
12 ing, determine that it is in the public interest to authorize the
13 district to incur indebtedness to provide for additional improvements or
14 activities, or to increase only in the amount to be expended annually,
15 or to increase the maximum total amount to be expended for improvements
16 or activities in the district. Notice of the hearing shall be published
17 and mailed in the manner provided in section four hundred fifty of this
18 article.

19 § 454. Expense of the district. 1. The expense incurred in the
20 construction or operation of any improvement, activities, or provision
21 of additional services in a district pursuant to this article shall be
22 financed in accordance with the district plan upon which the establish-
23 ment or extension of the district was based. Activities or services for
24 which district business owners are assessed pursuant to the plan shall
25 be in addition to or an enhancement of those provided by the munici-
26 pality prior to the establishment of the district. The expense and cost
27 apportioned to benefited businesses in accordance with the plan shall be
28 a business assessment upon each benefited business within the district.

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

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

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

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

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

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

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

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

29 § 458. Severability. If any provision of this article or the applica-
30 tion thereof to any person or circumstance shall be adjudged invalid by
31 any court of competent jurisdiction, such order or judgment shall be
32 confined in its operation to the controversy in which it was rendered
33 and shall not affect or invalidate the remainder of any provisions of
34 this article or the application of any part thereof to any other person
35 or circumstance and to this end the provisions of this article are here-
36 by declared to be severable.

37 § 2. This act shall take effect immediately.