

New York State Bar Association

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Memorandum in Support Environmental Law Section

Environmental #1

May 23, 2011

A. 5296

By: M. of A. Schimminger

S. 2446

By: Senator Young

Assembly Committees:

Local Governments

Ways & Means

Senate Committee:

Local Government

Effective Date: Immediately

AN ACT to amend the general municipal law, in relation to the municipal redevelopment law authorizing tax increment bonds payable from and secured by real property taxes levied by a school district within a project area

LAW AND SECTION REFERRED TO: Section 970-b of the general municipal law

THE ENVIRONMENTAL LAW SECTION SUPPORTS THIS LEGISLATION

The Environmental Law Section of the New York State Bar Association represents a large and diverse group of New York lawyers with an interest and expertise in environmental law.

Included among the Section's purposes, as set forth in its Mission Statement and consistent with its Bylaws, are activities "to support, promote or initiate desirable environmental law reform" and "to make recommendations for the improved integration of [environmental] laws to better effectuate protection of human health, the natural environment and the public welfare."

Consistent with this Mission and these purposes, the Environmental Law Section supports the adoption of the above-referenced legislation to correct a major defect in New York State's Tax Increment Financing (TIF) law, initially enacted in 1984 as part of the Municipal Redevelopment Law. The original and still very valid purpose of the TIF law was "to protect and promote the sound development and redevelopment of blighted areas" whenever the rehabilitation of such areas cannot be accomplished by private enterprise alone.

Effective TIF legislation in New York State would enhance and complement the operation of other environmental laws, such as the Brownfield Cleanup Program law, and help promote the protection of human health, the natural environment and the public welfare, by facilitating and incentivizing the cleanup and redevelopment of previously used and presumptively contaminated blighted areas known as "brownfield" sites (including clusters of such sites contained in nominated and designated "Brownfield Opportunity Areas" or "BOAs"). Such brownfield sites (and BOAs) exist in great abundance throughout New York State, especially in older urban areas. Not only do these vacant and underutilized properties represent eyesores and a drain on the resources of local governments and the State, but they have been shown to

depress the value and productivity of surrounding properties. Workable TIF legislation would give local governments a powerful new tool to revitalize blighted areas and promote much-needed economic development—and would do so without handouts from Albany or added burdens on taxpayers.

We support the indicated TIF reform bills for the following reasons:

1. They would correct a defect in New York's existing TIF enabling legislation that has prevented this powerful financing tool, which is successfully used in almost every other U.S. state and territory, from being used in New York more than twice in the last 27 years. Specifically, TIF bonds must be attractive to investors in order for the program to work. Investors will only invest in them if the projects being financed are viewed as well-conceived and likely to succeed and if the bonds are properly secured by incremental property tax revenues from TIF-enabled economic development projects to fully repay TIF bond principle, interest and expenses within the life of the bond. If incremental revenues from participating school districts are excluded from the equation, thereby eliminating as much as two-thirds (or more) of newly stimulated property tax proceeds from the equation in many parts of the State, TIF bonds become a much less attractive and much more risky investment option. The legislation we support would authorize, but not require, school districts within a proposed redevelopment area (TIF district) to opt-in to the TIF project, after full review and public process. On this basis, the State School Boards Association enthusiastically supported a predecessor version of the Schimminger bill (with the same opt-in authority) in 2008.
2. The legislation would further bolster TIF instruments as investment vehicles by giving sponsoring municipalities the authority, where necessary, to utilize a portion of sales tax revenues attributable to business activities within a TIF district to further guarantee repayment of TIF debt. Such earmarking of partial sales tax revenues would be especially appropriate where TIF investments facilitate or enable sales tax-generating commercial or industrial development activity.
3. To further incentivize investment in TIF bonds, the legislation would also allow municipalities to tap into revenues from special assessment districts within designated TIF districts, where necessary to ensure full coverage of TIF indebtedness.
4. The added reassurance to investors provided by each of the preceding financial guarantee mechanisms will all help ensure that TIF bonds are attractive to investors (and to bond-rating agencies) without providing exorbitant rates of interest.
5. The legislation would expand allowable uses of TIF funding to include authority to acquire land for “environmental remediation and brownfield redevelopment” purposes, making clear that brownfields are a covered subset of “blighted” properties, and avoiding the need for often complex “blight” determinations where a “brownfield” has been denominated as such by NYSDEC or the Department of State under the BCP or BOA programs.
6. Finally, the legislation would require municipal assessment officers to make annual “good faith” estimates of the assessed values (collectively) of parcels in TIF districts and of the

amount of revenues necessary to repay the following year's share of TIF indebtedness. The Office of Real Property would be tasked with developing guidance and providing assistance in this effort. Apart from being a prudent way to handle municipal finances, and to help manage the vagaries of the real estate market, this would allow local taxing authorities to hold onto (as "baseline" general revenue) normal appreciation in the tax base not attributable to TIF-induced economic growth.

Predecessor bills were passed unanimously by the NYS Senate in 2007-08 (S.371) and 2005-06 (S.8192). Identical bills (A.2378-A and S.1716-A) were reported out of committee in both the Senate and Assembly in 2009-10, but were not acted upon.

As stated simply and concisely in the bill summaries under "Fiscal Implications": "These amendments would stimulate economic development infrastructure financing, enhance tax bases, and lead to increased governmental revenues."

These bills, or their similar predecessors, have been endorsed or supported by more than 50 organizations, associations, individuals and other entities in all parts of the State and of every political persuasion. They include major business groups (e.g., the Business Council of New York State, NFIB, Unshackle Upstate Coalition, NYS Builders Association, NYS Association of Realtors, International Council of Shopping Centers); environmental organizations and other non-profits (e.g, New Partners for Community Revitalization, Sustainable Long Island, Hoffstra University, NYS Urban Council, The City University Institute for Urban Systems, Dowling College Economic & Social Policy Institute, Pratt Center for Community Development, The Center for Housing Policy, Brookings Institution); local governments and government associations (e.g., New York Conference of Mayors, New York State Association of Counties, NYS Economic Development Council, Government Finance Officers Association, Council of Development Finance Agencies, Nassau County, Broome County, Broome County Association of Towns and Villages, City of Schenectady, City of Binghamton, Town of Union); and school districts and associations (e.g., New York State School Boards Association, Schenectady City School District, Broome-Tioga BOCES [representing 15 school districts in Broome and Tioga Counties].

Based on the foregoing, the Environmental Law Section of the New York Bar Association **SUPPORTS** this legislation.

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