S T A T E O F N E W Y O R K

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2015-2016 Regular Sessions

I N S E N A T E

June 9, 2015

Introduced by Sen. MARCHIONE -- (at request of the State Comptroller) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general municipal law, in relation to the accountability and efficiency of industrial development agencies and authorities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 859-a of the general municipal law is amended by adding three new subdivisions 4, 5 and 6 to read as follows:

4. EACH AGENCY SHALL DEVELOP A STANDARD APPLICATION FORM, WHICH SHALL BE USED BY THE AGENCY TO ACCEPT REQUESTS FOR FINANCIAL ASSISTANCE FROM ALL INDIVIDUALS, FIRMS, COMPANIES, DEVELOPERS OR OTHER ENTITIES OR ORGANIZATIONS. THE STANDARD APPLICATION FORM SHALL BE SUBMITTED BY OR ON BEHALF OF THE APPLICANT, AND SUBSCRIBED AND AFFIRMED UNDER THE PENALTIES OF PERJURY BY THE APPLICANT, OR ON BEHALF OF THE APPLICANT BY THE CHIEF EXECUTIVE OFFICER OR SUCH OTHER INDIVIDUAL THAT IS DULY AUTHORIZED TO BIND THE APPLICANT, AS TRUE, ACCURATE AND COMPLETE TO THE BEST OF HIS OR HER KNOWLEDGE. THE STANDARD APPLICATION FORM SHALL INCLUDE THE FOLLOWING, AND MAY INCLUDE SUCH OTHER SUPPLEMENTAL INFORMATION AS DETERMINED TO BE NECESSARY AND APPROPRIATE BY THE AGENCY, INCLUDING SUPPORTING DOCUMENTS AND INFORMATION PROVIDED BY OR ON BEHALF OF THE APPLICANT:

(A) THE NAME AND ADDRESS OF THE PROJECT APPLICANT;

(B) A DESCRIPTION OF THE PROPOSED PROJECT FOR WHICH FINANCIAL ASSISTANCE IS REQUESTED, INCLUDING THE TYPE OF PROJECT, PROPOSED LOCATION AND PURPOSE OF THE PROJECT;

(C) THE AMOUNT AND TYPE OF FINANCIAL ASSISTANCE BEING REQUESTED, INCLUDING THE ESTIMATED VALUE OF EACH TYPE OF TAX EXEMPTION SOUGHT TO BE CLAIMED BY REASON OF AGENCY INVOLVEMENT IN THE PROJECT;

(D) A STATEMENT THAT THERE IS A LIKELIHOOD THAT THE PROJECT WOULD NOT BE UNDERTAKEN BUT FOR THE FINANCIAL ASSISTANCE PROVIDED BY THE AGENCY

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

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OR, IF THE PROJECT COULD BE UNDERTAKEN WITHOUT FINANCIAL ASSISTANCE PROVIDED BY THE AGENCY, A STATEMENT INDICATING WHY THE PROJECT SHOULD BE UNDERTAKEN BY THE AGENCY;

(E) AN ESTIMATE OF CAPITAL COSTS OF THE PROJECT, INCLUDING ALL COSTS OF REAL PROPERTY AND EQUIPMENT ACQUISITION AND BUILDING CONSTRUCTION OR RECONSTRUCTION, FINANCED FROM PRIVATE SECTOR SOURCES, AN ESTIMATE OF THE PERCENTAGE OF PROJECT COSTS FINANCED FROM PUBLIC SECTOR SOURCES, AND AN ESTIMATE OF BOTH THE AMOUNT TO BE INVESTED BY THE APPLICANT AND THE AMOUNT TO BE BORROWED TO FINANCE THE PROJECT.

(F) THE PROJECTED NUMBER OF FULL TIME EQUIVALENT JOBS THAT WOULD BE RETAINED AND THAT WOULD BE CREATED IF THE REQUEST FOR FINANCIAL ASSISTANCE IS GRANTED, THE PROJECTED TIMEFRAME FOR THE CREATION OF NEW JOBS, THE ESTIMATED SALARY AND FRINGE BENEFIT AVERAGES OR RANGES FOR CATEGORIES OF THE JOBS THAT WOULD BE RETAINED OR CREATED IF THE REQUEST FOR FINANCIAL ASSISTANCE IS GRANTED, AND AN ESTIMATE OF THE NUMBER OF RESIDENTS OF THE ECONOMIC DEVELOPMENT REGION AS ESTABLISHED PURSUANT TO SECTION TWO HUNDRED THIRTY OF THE ECONOMIC DEVELOPMENT LAW OR THE LABOR MARKET AREA AS DEFINED BY THE AGENCY, IN WHICH THE PROJECT IS LOCATED THAT WOULD FILL SUCH JOBS. THE LABOR MARKET AREA DEFINED BY THE AGENCY FOR THIS PURPOSE MAY INCLUDE NO MORE THAN SIX CONTIGUOUS COUNTIES IN THE STATE, INCLUDING THE COUNTY IN WHICH THE PROJECT IS TO BE LOCATED;

(G) A STATEMENT TO THE EFFECT THAT THE PROVISIONS OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED SIXTY-TWO OF THIS CHAPTER WILL NOT BE VIOLATED IF FINANCIAL ASSISTANCE IS PROVIDED FOR THE PROPOSED PROJECT;

(H) A STATEMENT THAT THE OWNER, OCCUPANT OR OPERATOR RECEIVING FINANCIAL ASSISTANCE IS IN SUBSTANTIAL COMPLIANCE WITH APPLICABLE LOCAL, STATE AND FEDERAL TAX, WORKER PROTECTION AND ENVIRONMENTAL LAWS, RULES AND REGULATIONS; AND

(I) A STATEMENT ACKNOWLEDGING THAT THE SUBMISSION OF ANY KNOWINGLY FALSE OR KNOWINGLY MISLEADING INFORMATION MAY LEAD TO THE IMMEDIATE TERMINATION OF ANY FINANCIAL ASSISTANCE AND THE REIMBURSEMENT OF AN AMOUNT EQUAL TO ALL OR PART OF ANY TAX EXEMPTIONS CLAIMED BY REASON OF AGENCY INVOLVEMENT IN THE PROJECT.

5. EACH AGENCY SHALL DEVELOP, AND ADOPT BY RESOLUTION, UNIFORM CRITERIA FOR THE EVALUATION AND SELECTION FOR EACH CATEGORY OF PROJECTS FOR WHICH FINANCIAL ASSISTANCE WILL BE PROVIDED. AT A MINIMUM, THE CRITERIA SHALL REQUIRE THAT, FOR EACH PROJECT, THE FOLLOWING MUST OCCUR PRIOR TO THE APPROVAL OF THE PROVISION OF FINANCIAL ASSISTANCE:

(A) AN ASSESSMENT BY THE AGENCY OF ALL MATERIAL INFORMATION INCLUDED IN CONNECTION WITH THE APPLICATION FOR FINANCIAL ASSISTANCE, AS NECESSARY TO AFFORD A REASONABLE BASIS FOR THE DECISION BY THE AGENCY TO PROVIDE FINANCIAL ASSISTANCE FOR THE PROJECT;

(B) A WRITTEN COST-BENEFIT ANALYSIS BY THE AGENCY THAT IDENTIFIES THE EXTENT TO WHICH A PROJECT WILL CREATE OR RETAIN PERMANENT, PRIVATE SECTOR JOBS; THE ESTIMATED VALUE OF ANY TAX EXEMPTIONS TO BE PROVIDED; THE AMOUNT OF PRIVATE SECTOR INVESTMENT GENERATED OR LIKELY TO BE GENERATED BY THE PROPOSED PROJECT; THE LIKELIHOOD OF ACCOMPLISHING THE PROPOSED PROJECT IN A TIMELY FASHION; AND THE EXTENT TO WHICH THE PROPOSED PROJECT WILL PROVIDE ADDITIONAL SOURCES OF REVENUE FOR MUNICIPALITIES AND SCHOOL DISTRICTS; AND ANY OTHER PUBLIC BENEFITS THAT MIGHT OCCUR AS A RESULT OF THE PROJECT;

(C) A STATEMENT BY THE APPLICANT THAT THE PROJECT, AS OF THE DATE OF THE APPLICATION, IS IN SUBSTANTIAL COMPLIANCE WITH ALL PROVISIONS OF THIS ARTICLE INCLUDING, BUT NOT LIMITED TO, THE PROVISIONS OF THIS SECTION AND SUBDIVISION ONE OF SECTION EIGHT HUNDRED SIXTY-TWO OF THIS CHAPTER; AND

(D) IF THE PROJECT INVOLVES THE REMOVAL OR ABANDONMENT OF A FACILITY OR PLANT WITHIN THE STATE, NOTIFICATION BY THE AGENCY TO THE CHIEF EXECUTIVE OFFICER OR OFFICERS OF THE MUNICIPALITY OR MUNICIPALITIES IN WHICH THE FACILITY OR PLANT WAS LOCATED.

6. EACH AGENCY SHALL DEVELOP A UNIFORM AGENCY PROJECT AGREEMENT THAT SETS FORTH TERMS AND CONDITIONS UNDER WHICH FINANCIAL ASSISTANCE SHALL BE PROVIDED. THE UNIFORM AGENCY PROJECT AGREEMENT SHALL BE USED BY THE AGENCY AND NO FINANCIAL ASSISTANCE SHALL BE PROVIDED IN THE ABSENCE OF THE EXECUTION OF SUCH AN AGREEMENT. THE UNIFORM AGENCY PROJECT AGREEMENT SHALL, AT A MINIMUM:

(A) DESCRIBE THE PROJECT AND THE FINANCIAL ASSISTANCE, INCLUDING THE AMOUNT AND TYPE, TO BE PROVIDED, AND THE AGENCY PURPOSE TO BE ACHIEVED;

(B) REQUIRE EACH PROJECT OWNER, OCCUPANT OR OPERATOR RECEIVING FINANCIAL BENEFITS TO PROVIDE ANNUALLY A CERTIFIED STATEMENT AND DOCUMENTATION: (I) ENUMERATING THE FULL TIME EQUIVALENT JOBS RETAINED AND THE FULL TIME EQUIVALENT JOBS CREATED AS A RESULT OF THE FINANCIAL ASSISTANCE, BY CATEGORY, INCLUDING FULL TIME EQUIVALENT INDEPENDENT CONTRACTORS OR EMPLOYEES OF INDEPENDENT CONTRACTORS THAT WORK AT THE PROJECT LOCATION, AND (II) INDICATING THAT THE SALARY AND FRINGE BENEFIT AVERAGES OR RANGES FOR CATEGORIES OF JOBS RETAINED AND JOBS CREATED THAT WAS PROVIDED IN THE APPLICATION IS STILL ACCURATE AND IF IT IS NOT STILL ACCURATE, PROVIDING A REVISED LIST OF SALARY AND FRINGE BENEFIT AVERAGES OR RANGES FOR CATEGORIES OF JOBS RETAINED AND JOBS CREATED.

(C) INDICATE THE DATES WHEN PILOT PAYMENTS ARE TO BE MADE AND PROVIDE AN ESTIMATE OF THE AMOUNTS FOR EACH AFFECTED TAX JURISDICTION OF ANY PAYMENTS IN LIEU OF TAXES THAT ARE INCLUDED AS PART OF THE TRANSACTION, OR FORMULA OR FORMULAS BY WHICH THOSE AMOUNTS MAY BE CALCULATED. IN LIEU OF PROVIDING SUCH INFORMATION, A COPY OF AN EXECUTED PAYMENT IN LIEU OF TAX AGREEMENT THAT CONTAINS THE SAME INFORMATION MAY BE ATTACHED TO THE UNIFORM AGENCY PROJECT AGREEMENT;

(E) PROVIDE FOR THE SUSPENSION OR DISCONTINUANCE OF FINANCIAL ASSISTANCE, OR FOR THE MODIFICATION OF ANY PAYMENT IN LIEU OF TAX AGREEMENT TO REQUIRE INCREASED PAYMENTS, IN ACCORDANCE WITH POLICIES DEVELOPED BY THE AGENCY PURSUANT TO SECTION EIGHT HUNDRED SEVENTY-FOUR OF THIS TITLE;

(F) PROVIDE FOR THE RETURN OF ALL OR A PART OF THE FINANCIAL ASSISTANCE PROVIDED FOR THE PROJECT, INCLUDING ALL OR PART OF THE AMOUNT OF ANY TAX EXEMPTIONS, WHICH SHALL BE REDISTRIBUTED TO THE APPROPRIATE AFFECTED TAX JURISDICTION, AS PROVIDED FOR IN POLICIES DEVELOPED BY THE AGENCY PURSUANT TO SECTION EIGHT HUNDRED SEVENTY-FOUR OF THIS TITLE, UNLESS AGREED TO OTHERWISE BY ANY LOCAL TAXING JURISDICTION OR JURISDICTIONS; AND

(G) PROVIDE THAT THE OWNER, OCCUPANT OR OPERATOR RECEIVING FINANCIAL ASSISTANCE SHALL CERTIFY, UNDER PENALTY OF PERJURY, THAT IT IS IN SUBSTANTIAL COMPLIANCE WITH ALL LOCAL, STATE AND FEDERAL TAX, WORKER PROTECTION AND ENVIRONMENTAL LAWS, RULES AND REGULATIONS.

S 2. Section 874 of the general municipal law is amended by adding three new subdivisions 10, 11 and 12 to read as follows:

(10) EACH AGENCY SHALL DEVELOP POLICIES FOR THE SUSPENSION OR DISCONTINUANCE OF FINANCIAL ASSISTANCE, OR FOR THE MODIFICATION OF ANY PAYMENT IN LIEU OF TAX AGREEMENT TO REQUIRE INCREASED PAYMENTS UNDER CIRCUMSTANCES AS SPECIFIED IN THE POLICY, WHICH MAY INCLUDE BUT SHALL NOT BE LIMITED TO EVENTS OF MATERIAL VIOLATION OF THE TERMS AND CONDITIONS OF A PROJECT AGREEMENT.

(11) EACH AGENCY SHALL DEVELOP POLICIES FOR THE RETURN OF ALL OR A PART OF THE FINANCIAL ASSISTANCE PROVIDED FOR THE PROJECT, INCLUDING ALL OR PART OF THE AMOUNT OF ANY TAX EXEMPTIONS, AS SPECIFIED IN THE POLICY,

WHICH MAY INCLUDE BUT SHALL NOT BE LIMITED TO MATERIAL SHORTFALLS IN JOB CREATION AND RETENTION PROJECTIONS OR MATERIAL VIOLATIONS OF THE TERMS AND CONDITIONS OF PROJECT AGREEMENTS. ALL SUCH RETURNED AMOUNTS OF TAX EXEMPTIONS SHALL BE REDISTRIBUTED TO THE APPROPRIATE AFFECTED TAX JURISDICTION, UNLESS AGREED TO OTHERWISE BY ANY LOCAL TAXING JURISDICTION.

(12) EACH AGENCY SHALL AT LEAST ANNUALLY ASSESS THE PROGRESS OF EACH PROJECT FOR WHICH BONDS OR NOTES REMAIN OUTSTANDING OR STRAIGHT-LEASE TRANSACTIONS HAVE NOT TERMINATED, OR WHICH CONTINUE TO RECEIVE FINANCIAL ASSISTANCE OR ARE OTHERWISE ACTIVE, TOWARD ACHIEVING THE INVESTMENT, JOB RETENTION OR CREATION, OR OTHER OBJECTIVES OF THE PROJECT INDICATED IN THE PROJECT APPLICATION. SUCH ASSESSMENTS SHALL BE PROVIDED TO BOARD MEMBERS.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to industrial development agencies created pursuant to article 18-A of the general municipal law and shall also apply with full force and effect to the cities of Troy and Auburn industrial development authorities established pursuant to the public authorities law; provided, however, the provisions of subdivision 12 of section 874 of the general municipal law as added by section two of this act shall apply only to projects approved on or after the effective date of this act.