

# STATE OF NEW YORK

4575

2021-2022 Regular Sessions

## IN ASSEMBLY

February 4, 2021

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law and the public authorities law, in relation to the applicability of open meetings and freedom of information laws to certain not-for-profit corporations

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

1 Section 1. Section 104 of the not-for-profit corporation law is  
2 amended by adding a new subdivision (h) to read as follows:

3 (h) The department shall transmit electronically to the authorities  
4 budget office a copy of every certificate of incorporation filed or  
5 delivered where the incorporator has indicated on the certificate that  
6 he or she is filing said certificate on the behalf or at the behest of a  
7 municipal corporation, state or local authority, or district.

8 § 2. The not-for-profit corporation law is amended by adding a new  
9 section 116 to read as follows:

10 § 116. Certain corporations subject to the open meetings and freedom of  
11 information laws.

12 The following corporations shall be subject to the provisions of arti-  
13 cles six and seven of the public officers law, relating to the freedom  
14 of information law and open meetings law respectively:

15 (a) All corporations whose certificate of incorporation includes the  
16 purpose of relieving and reducing unemployment, promoting and providing  
17 for additional and maximum employment, bettering and maintaining job  
18 opportunities, instructing or training individuals to improve or develop  
19 their capabilities for such jobs, carrying on scientific research for  
20 the purpose of aiding a community or geographical area by attracting new  
21 industry to the community or area or by encouraging the development of,  
22 or retention of, an industry in the community or area, and lessening the  
23 burdens of government and acting in the public interest, or any abbrevi-

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

LBD08161-01-1

1 ation or derivative thereof in a context that indicates or implies that  
2 the corporation is formed for any of the above purposes;

3 (b) All corporations whose certificate of incorporation or by-laws  
4 states or otherwise indicates that one or more individuals who serve as  
5 officers or employees of any municipal corporation, state or local  
6 authority, or district shall: (1) select either a majority of the corpo-  
7 ration's board of directors or the corporation's chief executive offi-  
8 cer; (2) constitute a majority of the voting strength that selects  
9 either a majority of the corporation's board of directors or the corpo-  
10 ration's chief executive officer; or (3) serve as: (i) a majority of  
11 the corporation's board of directors; or (ii) in his or her official  
12 capacity, the corporation's chief executive officer; or (iii) in his or  
13 her official capacity, a director in the organization; and

14 (c) All corporations whose certificate of incorporation indicates that  
15 such corporation is being incorporated on the behalf or at the behest of  
16 a municipal corporation, state and local authority, or district.

17 Such corporations shall, to the extent practicable: stream all open  
18 meetings on the corporation's website in real-time; post video  
19 recordings of all open meetings and public hearings on its website with-  
20 in five business days of the meeting; and maintain video recordings of  
21 such meetings for a period of not less than five years.

22 § 3. Subdivision 2-b of paragraph (a) of section 402 of the not-for-  
23 profit corporation law, as added by chapter 23 of the laws of 2014, is  
24 amended to read as follows:

25 (2-b) If it is not formed to engage in any activity or for any purpose  
26 requiring consent or approval of any state official, department, board,  
27 agency or other body, or does not require consent pursuant to subpara-  
28 graph (2) or (3) of paragraph (w) of section four hundred four of this  
29 article, a statement that no such consent or approval is required. Such  
30 statement shall be deemed conclusive for purposes of filing by the  
31 department of state. If subsequent to submitting the certificate of  
32 incorporation for filing, the corporation plans to engage in any activ-  
33 ity requiring consent or approval pursuant to section 404 (approvals,  
34 notices and consents) of this chapter, the corporation shall obtain such  
35 consent or approval and accordingly amend its certificate of incorpo-  
36 ration pursuant to article eight of this chapter.

37 § 4. Paragraph (a) of section 402 of the not-for-profit corporation  
38 law is amended by adding a new subparagraph 9 to read as follows:

39 (9) A statement whether the corporation is being incorporated on the  
40 behalf or at the behest of any municipal corporation, state or local  
41 authority, or district. If so, the incorporator shall identify such  
42 municipal corporation, state or local authority, or district.

43 § 5. Section 404 of the not-for-profit corporation law is amended by  
44 adding a new paragraph (w) to read as follows:

45 (w) Every certificate of incorporation which includes any of the  
46 following shall have endorsed thereon or annexed thereto the consent of  
47 the director of the authorities budget office:

48 (1) includes among its purposes the relieving and reducing of unem-  
49 ployment, promoting and providing for additional and maximum employment,  
50 bettering and maintaining job opportunities, instructing or training  
51 individuals to improve or develop their capabilities for such jobs,  
52 carrying on scientific research for the purpose of aiding a community or  
53 geographical area by attracting new industry to the community or area or  
54 by encouraging the development of, or retention of, an industry in the  
55 community or area, and lessening the burdens of government and acting in  
56 the public interest, or any abbreviation or derivative thereof in a

1 context that indicates or implies that the corporation is formed for any  
2 of the above purposes;

3 (2) indicates that one or more individuals who serve as officers or  
4 employees of any municipal corporation, state or local authority, or  
5 district shall: (i) select either a majority of the corporation's board  
6 of directors or the corporation's chief executive officer; (ii) consti-  
7 tute a majority of the voting strength that selects either a majority of  
8 the corporation's board of directors or the corporation's chief execu-  
9 tive officer; or (iii) serve as: (A) a majority of the corporation's  
10 board of directors; or (B) in his or her official capacity, the corpo-  
11 ration's chief executive officer; or (C) in his or her official capaci-  
12 ty, a director in the corporation; or

13 (3) indicates that such corporation is being incorporated on the  
14 behalf or at the behest of any municipal corporation, state or local  
15 authority, or district.

16 The director shall make such inquiry into the purposes of the proposed  
17 corporation as he or she shall deem advisable.

18 § 6. Paragraph (a) of section 1411 of the not-for-profit corporation  
19 law, as amended by chapter 847 of the laws of 1970, is amended to read  
20 as follows:

21 (a) Purposes.

22 This section shall provide an additional and alternate method of  
23 incorporation or reincorporation of not-for-profit corporations for any  
24 of the purposes set forth in this paragraph and shall not be deemed to  
25 alter, impair or diminish the purposes, rights, powers or privileges of  
26 any corporation heretofore or hereafter incorporated under this section  
27 or under the stock or business corporation laws. Corporations may be  
28 incorporated or reincorporated under this section as not-for-profit  
29 local development corporations operated for the exclusively charitable  
30 or public purposes of relieving and reducing unemployment, promoting and  
31 providing for additional and maximum employment, bettering and maintain-  
32 ing job opportunities, instructing or training individuals to improve or  
33 develop their capabilities for such jobs, carrying on scientific  
34 research for the purpose of aiding a community or geographical area by  
35 attracting new industry to the community or area or by encouraging the  
36 development of, or retention of, an industry in the community or area,  
37 and lessening the burdens of government and acting in the public inter-  
38 est, and any one or more counties, cities, towns or villages of the  
39 state, or any combination thereof, or the New York job development  
40 authority in exercising its power under the public authorities law to  
41 encourage the organization of local development corporations, may cause  
42 such corporations to be incorporated by public officers or private indi-  
43 viduals or reincorporated upon compliance with the requirements of this  
44 section, and it is hereby found, determined and declared that in carry-  
45 ing out said purposes and in exercising the powers conferred by para-  
46 graph (b) such corporations will be performing an essential governmental  
47 function. A not-for-profit corporation may not incorporate or reincorpo-  
48 rate under this section if its sole corporate purpose is for lessening  
49 the burdens of government and acting in the public interest.

50 § 7. Subparagraph 2 of paragraph (d) of section 1411 of the not-for-  
51 profit corporation law is amended to read as follows:

52 (2) Notwithstanding the provisions of any general, special or local  
53 law, charter or ordinance to the contrary, such sale or lease may be  
54 made without appraisal (except as may be necessary in regard to subpara-  
55 graph (4) of this paragraph), public notice<sup>[7]</sup> (except as provided in  
56 subparagraph (4) of this paragraph), or public bidding for such price or

rental and upon such terms as may be agreed upon between the county, city, town or village and said local development corporation; provided, however, that in case of a lease the term may not exceed ~~[ninety-nine]~~ five years and provided, further, that in cities having a population of one million or more, no such sale or lease shall be made without the approval of a majority of the members of the borough improvement board of the borough in which such real property is located.

§ 8. Subparagraph 4 of paragraph (d) of section 1411 of the not-for-profit corporation law is amended to read as follows:

(4) Notice of such hearing shall be published at least ~~[ten]~~ twenty-one days before the date set for the hearing in such publication and in such manner as may be designated by the local legislative body, or the board of estimate as the case may be. Such notice shall also include: a description of the property at issue; the value of the proposed consideration to be received from the sale or lease; the estimated fair market value of the asset; and a statement of the intended use or disposition of the property by the local development corporation.

§ 9. Paragraph (i) of section 1411 of the not-for-profit corporation law is amended to read as follows:

(i) Contracts between a municipal corporation, public authority, or district and a local development corporation.

Any contract or other agreement between a local development corporation and a municipal corporation, state authority or local authority, or district for one or more of the purposes enumerated in paragraph (a) of this section shall: (1) cause the local development corporation to be defined as a local authority pursuant to subdivision two of section two of the public authorities law; (2) provide for the municipal corporation, state authority or local authority, or district to receive fair and adequate consideration; (3) be subject to the requirements of article five-A of the general municipal law; and (4) have a term not to exceed five years, subject to one or more subsequent renewals for a term not to exceed five years each upon the mutual consent of the parties; provided however that a contract with a municipal corporation shall not be used to finance the municipal corporation's operations or to acquire or improve an asset for use of the municipal corporation.

(j) Applicability of freedom of information and open meetings laws.

All local development corporations incorporated or reincorporated under this section, as well as all affiliates or subsidiaries of such corporations, shall be subject to the provisions of articles six and seven of the public officers law, relating to the freedom of information law and open meetings law respectively. The corporation shall, to the extent practicable, stream all open meetings on its website in real-time. The corporation shall, to the extent practicable, post video recordings of all open meetings and public hearings on its website within five business days of the meeting and shall maintain such recordings for a period of not less than five years.

(k) Effect of section.

Corporations incorporated or reincorporated under this section shall be organized and operated exclusively for the purposes set forth in paragraph (a) of this section, shall have, in addition to the powers otherwise conferred by law, the powers conferred by paragraph (c) of this section and shall be subject to all the restrictions ~~[and]~~ limitations and obligations imposed by ~~[paragraph]~~ paragraphs (e) ~~[and paragraph]~~ (g), (i) and (j) of this section. In so far as the provisions of this section are inconsistent with the provisions of any other law,

1 general or special, the provisions of this section shall be controlling  
2 as to corporations incorporated or reincorporated hereunder.

3 § 10. Subdivision 2 of section 2 of the public authorities law, as  
4 amended by chapter 257 of the laws of 2011, is amended to read as  
5 follows:

6 2. "local authority" shall mean (a) a public authority or public bene-  
7 fit corporation created by or existing under this chapter or any other  
8 law of the state of New York whose members do not hold a civil office of  
9 the state, are not appointed by the governor or are appointed by the  
10 governor specifically upon the recommendation of the local government or  
11 governments; (b) a not-for-profit corporation, other than a fire corpo-  
12 ration, statewide association of local governments or local officials,  
13 or business improvement district, affiliated with, sponsored by, or  
14 created by a county, city, town or village government; (c) a local  
15 industrial developmental agency or authority or other local public bene-  
16 fit corporation; (d) an affiliate of such local authority; ~~or~~ (e) a  
17 land bank corporation created pursuant to article sixteen of the not-  
18 for-profit corporation law; or (f) a not-for-profit corporation, other  
19 than a fire corporation or statewide association of local governments or  
20 local officials, or business improvement district, that (i) has issued  
21 or has the authority to issue tax exempt debt or (ii) provides state or  
22 municipal tax exemptions through its participation in a project under-  
23 taken in furtherance of its purposes.

24 For the purposes of paragraph (b) of the opening paragraph of this  
25 subdivision, "affiliated with, sponsored by, or created by a county,  
26 city, town or village government" shall also include, but not be limited  
27 to, entities: (a) where one or more individuals who serve as officers  
28 or employees of any county, city, town, village: (i) select either a  
29 majority of the not-for-profit corporation's board of directors or the  
30 not-for-profit corporation's chief executive officer; (ii) constitute a  
31 majority of the voting strength that selects either a majority of the  
32 not-for-profit corporation's board of directors or the corporation's  
33 chief executive officer; or (iii) serve as: (1) a majority of the not-  
34 for-profit corporation's board of directors; or (2) in his or her offi-  
35 cial capacity, the not-for-profit corporation's chief executive officer;  
36 or (3) in his or her official capacity, a director in the not-for-profit  
37 corporation; or (b) which pay staff of a state or local government or  
38 state or local authority to provide administrative or operational  
39 support.

40 § 11. The public authorities law is amended by adding a new section  
41 2829 to read as follows:

42 § 2829. State and local authorities subject to the open meetings and  
43 freedom of information laws. All state and local authorities, as such  
44 terms are defined in section two of this chapter, as well as all subsid-  
45 iaries and affiliates of such state and local authorities, as such terms  
46 are defined in section two of this chapter, shall be subject to the  
47 provisions of articles six and seven of the public officers law relating  
48 to the freedom of information and open meetings laws respectively. All  
49 state and local authorities, as well as all subsidiaries and affiliates  
50 of such state and local authorities, shall, to the extent practicable,  
51 stream all open meetings and public hearings on its website in real-  
52 time, post video recordings of all open meetings and public hearings on  
53 its website within five business days of the meeting or hearing and  
54 maintain such recordings for a period of not less than five years.

55 § 12. This act shall take effect on the thirtieth day after it shall  
56 have become a law; provided, however, that the provisions of paragraph

1 (i) of section 1411 of the not-for-profit corporation law, as added  
2 pursuant to section nine of this act shall not apply retroactively to  
3 contracts or agreements between a local development corporation and a  
4 municipal corporation, state or local authority, or district entered  
5 into prior to the effective date of this act.