

STATE OF NEW YORK

4339

2021-2022 Regular Sessions

IN SENATE

February 3, 2021

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed 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.

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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^[7] (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]~~ 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.