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

790

2009-2010 Regular Sessions

I N S E N A T E

January 15, 2009

Introduced by Sen. ALESI -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, the executive law and the public officers law, in relation to clarifying the application of the accountability standards, open meetings law and freedom of information requirements to local development corporations

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

Section 1. Paragraph (a) of subdivision 2 of section 2800 of the public authorities law, as added by chapter 766 of the laws of 2005, is amended to read as follows:

(a) Every local authority, [continued or created by this chapter or any other chapter of the laws of the state of New York] PURSUANT TO SECTION TWO OF THIS CHAPTER shall submit to the chief executive officer, the chief fiscal officer, the chairperson of the legislative body of the local government or local governments and the entity established pursuant to section twenty-seven of [the] chapter SEVEN HUNDRED SIXTY-SIX of the laws of two thousand five [which added this subdivision], within ninety days after the end of its fiscal year, a complete and detailed report or reports setting forth: (1) its operations and accomplishments; (2) its receipts and disbursements, or revenues and expenses, during such fiscal year in accordance with the categories or classifications established by such authority for its own operating and capital outlay purposes; (3) its assets and liabilities at the end of its fiscal year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds; (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance that includes the date of issuance, term, amount, interest rate and means of repay-

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

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ment. Additionally, the debt schedule shall also include all refinancings, calls, refundings, defeasements and interest rate exchange or other such agreements, and for any debt issued during the reporting year, the schedule shall also include a detailed list of costs of issuance for such debt; (5) a compensation schedule that shall include, by position, title and name of the person holding such position or title, the salary, compensation, allowance and/or benefits provided to any officer, director or employee in a decision making or managerial position of such authority whose salary is in excess of one hundred thousand dollars; (6) the projects undertaken by such authority during the past year; (7) a listing of (i) all real property of such authority having an estimated fair market value in excess of fifteen thousand dollars that the authority intends to dispose of; (ii) all such property held by the authority at the end of the period covered by the report; and (iii) all such property disposed of during such period. The report shall contain an estimate of fair market value for all such property held by the authority at the end of the period and the price received by the authority and the name of the purchaser for all such property sold by the authority during such period; (8) such authority's code of ethics; and (9) an assessment of the effectiveness of its internal control structure and procedures.

S 2. Subdivision 2 of section 2801 of the public authorities law, as added by chapter 766 of the laws of 2005, is amended to read as follows:

2. Local authorities. For the local authority fiscal year ending on or after December thirty-first, two thousand seven and annually thereafter, every local authority [heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York] PURSUANT TO SECTION TWO OF THIS CHAPTER shall submit to the chief executive officer, the chief fiscal officer, the chairperson of the legislative body of the local government or governments and the entity established pursuant to section twenty-seven of [the] chapter SEVEN HUNDRED SIXTY-SIX of the laws of two thousand five [which added this subdivision], for their information, annually not less than sixty days before the commencement of its fiscal year, in the form submitted to its members or trustees, budget information on operations and capital construction setting forth the estimated receipts and expenditures for the next fiscal year and the current fiscal year, and the actual receipts and expenditures for the last completed fiscal year.

S 3. Subdivision 1 of section 2895 of the public authorities law, as added by chapter 766 of the laws of 2005, is amended to read as follows:

1. "Contracting officer" shall mean the officer or employee of a public authority OR LOCAL AUTHORITY PURSUANT TO SECTION TWO OF THIS CHAPTER who shall be appointed by resolution of the board of the public OR LOCAL authority to be responsible for the disposition of property.

S 4. Section 2896 of the public authorities law, as added by chapter 766 of the laws of 2005, is amended to read as follows:

S 2896. Duties of public AND LOCAL authorities with respect to the disposal of property. 1. Every PUBLIC AND LOCAL authority, as defined in section two of this chapter, shall adopt by resolution comprehensive guidelines which shall (a) detail the public OR LOCAL authority's operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of property, and (b) designate a contracting officer who shall be responsible for the public OR LOCAL authority's compliance with, and enforcement of, such guidelines. Such guidelines shall be consistent with, and shall require the public OR LOCAL authority's contracting activities to comply with this section,

the [authorities] AUTHORITY'S enabling legislation and any other applicable law for the disposal of property, except that such guidelines may be stricter than the provisions of this section, the authorities enabling legislation and any other applicable law for the disposal of property if the public OR LOCAL authority determines that additional safeguards are necessary to assure the integrity of its disposition activities. Guidelines approved by the public OR LOCAL authority shall be annually reviewed and approved by the governing body of the public OR LOCAL authority. On or before the thirty-first day of March in each year, the public OR LOCAL authority shall file with the comptroller a copy of the guidelines most recently reviewed and approved by the public OR LOCAL authority, including the name of the public OR LOCAL authority's designated contracting officer. At the time of filing such guidelines with the comptroller, every public OR LOCAL authority shall also post such guidelines on the public OR LOCAL authority's internet website. IF THE LOCAL AUTHORITY DOES NOT MAINTAIN ITS OWN WEBSITE, THEN THE GUIDELINES SHALL BE POSTED ON THE WEBSITE OF THE LOCALITY WHICH CREATED SUCH AUTHORITY. Guidelines posted on the public OR LOCAL authority's internet website shall be maintained on such website at least until the procurement guidelines for the following year are posted on such website.

2. Each public OR LOCAL authority shall:

a. maintain adequate inventory controls and accountability systems for all property under its control;

b. periodically inventory such property to determine which property shall be disposed of;

c. produce a written report of such property in accordance with subdivision three of this section;

d. transfer or dispose of such property as promptly as possible in accordance with section twenty-eight hundred ninety-seven of this title.

3. a. Each public OR LOCAL authority shall publish, not less frequently than annually, a report listing all real property of the public OR LOCAL authority. Such report shall consist of a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the public OR LOCAL authority and the name of the purchaser for all such property sold by [the] SUCH public OR LOCAL authority during such period.

b. The public authority shall deliver copies of such report to the comptroller, the director of the budget, the commissioner of general services, and the legislature.

C. THE LOCAL AUTHORITY SHALL DELIVER COPIES OF SUCH REPORT TO THE COMPTROLLER, THE CHIEF EXECUTIVE OFFICER OF THE LOCALITY, AND THE CHAIRPERSON OF THE LEGISLATIVE BODY OF THE LOCAL GOVERNMENT.

S 5. Section 2897 of the public authorities law, as added by chapter 766 of the laws of 2005, is amended to read as follows:

S 2897. Disposal of public OR LOCAL authority property. 1. Supervision and direction. Except as otherwise provided in this section, the contracting officer designated by each public OR LOCAL authority shall have supervision and direction over the disposition of property of such public OR LOCAL authority.

2. Custody and control. (A) The custody and control of the property of a public authority, pending its disposition, and the disposal of such property, shall be performed by the public authority in possession thereof or by the commissioner of general services when so authorized under this section.

(B) THE CUSTODY AND CONTROL OF THE PROPERTY OF A LOCAL AUTHORITY, PENDING ITS DISPOSITION, AND THE DISPOSAL OF SUCH PROPERTY SHALL BE PERFORMED BY THE LOCAL AUTHORITY IN POSSESSION THEREOF.

3. Method of disposition. Subject to section twenty-eight hundred ninety-six of this title, any public OR LOCAL authority may dispose of property for not less than the fair market value of such property by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the contracting officer deems proper, and it may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this section. Provided, however, that no disposition of real property, any interest in real property, or any other property which because of its unique nature is not subject to fair market pricing shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction.

4. Sales by the commissioner of general services. When it shall be deemed advantageous to the state, any public authority may enter into an agreement with the commissioner of general services where under such commissioner may dispose of property of such public authority under terms and conditions agreed to by the public authority and the commissioner of general services. In disposing of any such property of a public authority, the commissioner of general services shall be bound by the terms of this title and references to the contracting officer shall be deemed to refer to such commissioner.

5. Validity of deed, bill of sale, lease, or other instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of any public OR LOCAL authority, purporting to transfer title or any other interest in property of a public OR LOCAL authority under this title shall be conclusive evidence of compliance with the provisions of this title insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to the closing.

6. Bids for disposal; advertising; procedure; disposal by negotiation; explanatory statement. a. All disposals or contracts for disposal of property of a public OR LOCAL authority made or authorized by the contracting officer shall be made after publicly advertising for bids except as provided in paragraph c of this subdivision.

b. Whenever public advertising for bids is required under paragraph a of this subdivision:

(i) the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property;

(ii) all bids shall be publicly disclosed at the time and place stated in the advertisement; and

(iii) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the state OR THE LOCALITY, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

c. Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to paragraphs a and b of this

subdivision but subject to obtaining such competition as is feasible under the circumstances, if:

(i) the personal property involved is of a nature and quantity which, if disposed of under paragraphs a and b of this subdivision, would aversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;

(ii) the fair market value of the property does not exceed fifteen thousand dollars;

(iii) bid prices after advertising therefor are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;

(iv) the disposal will be to the state or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(v) the disposal is for an amount less than the estimated fair market value of the property, the terms of such disposal are obtained by public auction or negotiation, the disposal of the property is intended to further the public health, safety or welfare or an economic development interest of the state or a political subdivision (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits), the purpose and the terms of such disposal are documented in writing and approved by resolution of the board of the public authority; or

(vi) such action is otherwise authorized by law.

d. (i) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:

(A) any personal property which has an estimated fair market value in excess of fifteen thousand dollars;

(B) any real property that has an estimated fair market value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses (C) through (E) of this subparagraph;

(C) any real property disposed of by lease for a term of five years or less, if the estimated fair annual rent is in excess of one hundred thousand dollars for any of such years;

(D) any real property disposed of by lease for a term of more than five years, if the total estimated rent over the term of the lease is in excess of one hundred thousand dollars; or

(E) any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

(ii) Each such statement shall be transmitted to the persons entitled to receive copies of the report required under section twenty-eight hundred ninety-six of this title not less than ninety days in advance of such disposal, and a copy thereof shall be preserved in the files of the public or local authority making such disposal.

S 6. Section 51 of the executive law, as added by chapter 766 of the laws of 2005, is amended to read as follows:

S 51. Jurisdiction. This article shall, subject to the limitations contained herein, confer upon the office of the state inspector general, jurisdiction over all covered agencies. For the purposes of this article "covered agency" shall include all executive branch agencies, depart-

ments, divisions, officers, boards and commissions, public AND LOCAL authorities, AS DEFINED IN SECTION TWO OF THE PUBLIC AUTHORITIES LAW (other than multi-state or multi-national authorities), and public benefit corporations, the heads of which are appointed by the governor and which do not have their own inspector general by statute. Wherever a covered agency is a board, commission, a public authority or public benefit corporation, the head of the agency is the chairperson thereof.

S 7. Subdivision 3 of section 86 of the public officers law, as added by chapter 933 of the laws of 1977, is amended to read as follows:

3. "Agency" means any state or municipal department, board, bureau, division, commission, committee, public OR LOCAL authority (AS DEFINED IN SECTION TWO OF THE PUBLIC AUTHORITIES LAW), public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature.

S 8. Subdivision 2 of section 102 of the public officers law, as amended by chapter 704 of the laws of 1979 and such section as renumbered by chapter 652 of the laws of 1983, is amended to read as follows:

2. "Public body" means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, OR A LOCAL AUTHORITY AS DEFINED BY SECTION TWO OF THE PUBLIC AUTHORITIES LAW, or committee or subcommittee or other similar body of such public body.

S 9. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.