

5399

2011-2012 Regular Sessions

I N   S E N A T E

May 17, 2011

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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:

1     Section 1. Paragraph (a) of subdivision 2 of section 2800 of the  
2     public authorities law, as amended by chapter 506 of the laws of 2009,  
3     is amended to read as follows:  
4     (a) Every local authority, [continued or created by this chapter or  
5     any other chapter of the laws of the state of New York] PURSUANT TO  
6     SECTION TWO OF THIS CHAPTER shall submit to the chief executive officer,  
7     the chief fiscal officer, the chairperson of the legislative body of the  
8     local government or local governments and the authorities budget office,  
9     within ninety days after the end of its fiscal year, a complete and  
10    detailed report or reports setting forth: (1) its operations and accom-  
11    plishments; (2) its financial reports, including (i) audited financials  
12    in accordance with all applicable regulations and following generally  
13    accepted accounting principles as defined in subdivision ten of section  
14    two of the state finance law, (ii) grants and subsidy programs, (iii)  
15    operating and financial risks, (iv) current ratings if any, of its bonds  
16    issued by recognized municipal bond rating agencies and notice of chang-  
17    es in such ratings, and (v) long-term liabilities, including leases and  
18    employee benefit plans; (3) its mission statement and measurements  
19    including its most recent measurement report; (4) a schedule of its  
20    bonds and notes outstanding at the end of its fiscal year, together with  
21    a statement of the amounts redeemed and incurred during such fiscal year  
22    as part of a schedule of debt issuance that includes the date of issu-

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

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1   ance, term, amount, interest rate and means of repayment. Additionally,  
2   the debt schedule shall also include all refinancings, calls,  
3   refundings, defeasements and interest rate exchange or other such agree-  
4   ments, and for any debt issued during the reporting year, the schedule  
5   shall also include a detailed list of costs of issuance for such debt;  
6   (5) a compensation schedule in addition to the report described in  
7   section twenty-eight hundred six of this title that shall include, by  
8   position, title and name of the person holding such position or title,  
9   the salary, compensation, allowance and/or benefits provided to any  
10  officer, director or employee in a decision making or managerial posi-  
11  tion of such authority whose salary is in excess of one hundred thousand  
12  dollars; (5-a) biographical information, not including confidential  
13  personal information, for all directors and officers and employees for  
14  whom salary reporting is required under subparagraph five of this para-  
15  graph; (6) the projects undertaken by such authority during the past  
16  year; (7) a listing and description, in addition to the report required  
17  by paragraph a of subdivision three of section twenty-eight hundred  
18  ninety-six of this article of all real property of such authority having  
19  an estimated fair market value in excess of fifteen thousand dollars  
20  that the authority acquires or disposes of during such period. The  
21  report shall contain the price received or paid by the authority and the  
22  name of the purchaser or seller for all such property sold or bought by  
23  the authority during such period; (8) such authority's code of ethics;  
24  (9) an assessment of the effectiveness of its internal control structure  
25  and procedures; (10) a copy of the legislation that forms the statutory  
26  basis of the authority; (11) a description of the authority and its  
27  board structure, including (i) names of committees and committee  
28  members, (ii) lists of board meetings and attendance, (iii) descriptions  
29  of major authority units, subsidiaries, (iv) number of employees, and  
30  (v) organizational chart; (12) its charter, if any, and by-laws; (13) a  
31  listing of material changes in operations and programs during the  
32  reporting year; (14) at a minimum a four-year financial plan, including  
33  (i) a current and projected capital budget, and (ii) an operating budget  
34  report, including an actual versus estimated budget, with an analysis  
35  and measurement of financial and operating performance; (15) its board  
36  performance evaluations provided, however, that such evaluations shall  
37  not be subject to disclosure under article six of the public officers  
38  law; (16) a description of the total amounts of assets, services or both  
39  assets and services bought or sold without competitive bidding, includ-  
40  ing (i) the nature of those assets and services, (ii) the names of the  
41  counterparties, and (iii) where the contract price for assets purchased  
42  exceeds fair market value, or where the contract price for assets sold  
43  is less than fair market value, a detailed explanation of the justifica-  
44  tion for making the purchase or sale without competitive bidding, and a  
45  certification by the chief executive officer and chief financial officer  
46  of the public authority that they have reviewed the terms of such  
47  purchase or sale and determined that it complies with applicable law and  
48  procurement guidelines; and (17) a description of any material pending  
49  litigation in which the authority is involved as a party during the  
50  reporting year, except that no provider of medical services need  
51  disclose information about pending malpractice claims beyond the exist-  
52  ence of such claims.

53   S 2. Subdivision 2 of section 2801 of the public authorities law, as  
54  added by chapter 506 of the laws of 2009, is amended to read as follows:

55   2. Local authorities. For the local authority fiscal year ending on or  
56  after December thirty-first, two thousand seven and annually thereafter,

1 every local authority [heretofore or hereafter continued or created by  
2 this chapter or any other chapter of the laws of the state of New York],  
3 PURSUANT TO SECTION TWO OF THIS CHAPTER, shall submit to the chief execu-  
4 tive officer, the chief fiscal officer, the chairperson of the legisla-  
5 tive body of the local government or governments and the authorities  
6 budget office for their information, annually not more than ninety days  
7 and not less than sixty days before the commencement of its fiscal year,  
8 in the form submitted to its members or trustees, budget information on  
9 operations and capital construction setting forth the estimated receipts  
10 and expenditures for the next fiscal year and the current fiscal year,  
11 and the actual receipts and expenditures for the last completed fiscal  
12 year.

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

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

19 S 4. Section 2896 of the public authorities law, as added by chapter  
20 766 of the laws of 2005 and subdivision 3 as amended by chapter 506 of  
21 the laws of 2009, is amended to read as follows:

22 S 2896. Duties of public AND LOCAL authorities with respect to the  
23 disposal of property. 1. Every PUBLIC AND LOCAL authority, as defined in  
24 section two of this chapter, shall adopt by resolution comprehensive  
25 guidelines which shall (a) detail the public OR LOCAL authority's opera-  
26 tive policy and instructions regarding the use, awarding, monitoring and  
27 reporting of contracts for the disposal of property, and (b) designate a  
28 contracting officer who shall be responsible for the public OR LOCAL  
29 authority's compliance with, and enforcement of, such guidelines. Such  
30 guidelines shall be consistent with, and shall require the public OR  
31 LOCAL authority's contracting activities to comply with this section,  
32 the [authorities] AUTHORITY'S enabling legislation and any other appli-  
33 cable law for the disposal of property, except that such guidelines may  
34 be stricter than the provisions of this section, the authorities enab-  
35 ling legislation and any other applicable law for the disposal of proper-  
36 ty if the public OR LOCAL authority determines that additional safe-  
37 guards are necessary to assure the integrity of its disposition  
38 activities. Guidelines approved by the public OR LOCAL authority shall  
39 be annually reviewed and approved by the governing body of the public OR  
40 LOCAL authority. On or before the thirty-first day of March in each  
41 year, the public OR LOCAL authority shall file with the comptroller a  
42 copy of the guidelines most recently reviewed and approved by the public  
43 OR LOCAL authority, including the name of the public OR LOCAL authori-  
44 ty's designated contracting officer. At the time of filing such guide-  
45 lines with the comptroller, every public OR LOCAL authority shall also  
46 post such guidelines on the public OR LOCAL authority's internet  
47 website. IF THE LOCAL AUTHORITY DOES NOT MAINTAIN ITS OWN WEBSITE, THEN  
48 THE GUIDELINES SHALL BE POSTED ON THE WEBSITE OF THE LOCALITY WHICH  
49 CREATED SUCH AUTHORITY. Guidelines posted on the public OR LOCAL author-  
50 ity's internet website shall be maintained on such website at least  
51 until the procurement guidelines for the following year are posted on  
52 such website.

53 2. Each public OR LOCAL authority shall:

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

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

3 c. produce a written report of such property in accordance with subdi-  
4 vision three of this section;

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

7 3. a. Each public OR LOCAL authority shall publish, not less frequent-  
8 ly than annually, a report listing all real property of the public OR  
9 LOCAL authority. Such report shall include a list and full description  
10 of all real and personal property disposed of during such period. The  
11 report shall contain the price received by the public OR LOCAL authority  
12 and the name of the purchaser for all such property sold by [the] SUCH  
13 public OR LOCAL authority during such period.

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

17 C. THE LOCAL AUTHORITY SHALL DELIVER COPIES OF SUCH REPORT TO THE  
18 COMPTROLLER, THE CHIEF EXECUTIVE OFFICER OF THE LOCALITY, AND THE CHAIR-  
19 PERSON OF THE LEGISLATIVE BODY OF THE LOCAL GOVERNMENT.

20 S 5. Section 2897 of the public authorities law, as added by chapter  
21 766 of the laws of 2005, subdivision 3 and paragraphs c and d of subdi-  
22 vision 6 as amended and subdivision 7 as added by chapter 506 of this  
23 laws of 2009, is amended to read as follows:

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

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

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

37 3. Method of disposition. Subject to section twenty-eight hundred  
38 ninety-six of this title, any public OR LOCAL authority may dispose of  
39 property for not less than the fair market value of such property by  
40 sale, exchange, or transfer, for cash, credit, or other property, with  
41 or without warranty, and upon such other terms and conditions as the  
42 contracting officer deems proper, and it may execute such documents for  
43 the transfer of title or other interest in property and take such other  
44 action as it deems necessary or proper to dispose of such property under  
45 the provisions of this section. Provided, however, that no disposition  
46 of real property, or any interest in real property, shall be made unless  
47 an appraisal of the value of such property has been made by an independ-  
48 ent appraiser and included in the record of the transaction, and,  
49 provided further, that no disposition of any other property, which  
50 because of its unique nature or the unique circumstances of the proposed  
51 transaction is not readily valued by reference to an active market for  
52 similar property, shall be made without a similar appraisal.

53 4. Sales by the commissioner of general services. When it shall be  
54 deemed advantageous to the state, any public authority may enter into an  
55 agreement with the commissioner of general services where under such  
56 commissioner may dispose of property of such public authority under

1 terms and conditions agreed to by the public authority and the commis-  
2 sioner of general services. In disposing of any such property of a  
3 public authority, the commissioner of general services shall be bound by  
4 the terms of this title and references to the contracting officer shall  
5 be deemed to refer to such commissioner.

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

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

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

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

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

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

33 c. Disposals and contracts for disposal of property may be negotiated  
34 or made by public auction without regard to paragraphs a and b of this  
35 subdivision but subject to obtaining such competition as is feasible  
36 under the circumstances, if:

37 (i) the personal property involved has qualities separate from the  
38 utilitarian purpose of such property, such as artistic quality, antiqui-  
39 ty, historical significance, rarity, or other quality of similar effect,  
40 that would tend to increase its value, or if the personal property is to  
41 be sold in such quantity that, if it were disposed of under paragraphs a  
42 and b of this subdivision, would adversely affect the state or local  
43 market for such property, and the estimated fair market value of such  
44 property and other satisfactory terms of disposal can be obtained by  
45 negotiation;

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

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

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

54 (v) under those circumstances permitted by subdivision seven of this  
55 section; or

56 (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) and (D) of this subparagraph;

(C) any real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars;

(D) 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 authority making such disposal.

7. Disposal of property for less than fair market value. a. No asset owned, leased or otherwise in the control of a public OR LOCAL authority may be sold, leased, or otherwise alienated for less than its fair market value except if:

(i) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;

(ii) the purpose of the transfer is within the purpose, mission or governing statute of the public OR LOCAL authority; or

(iii) in the event a public OR LOCAL authority seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the authority's mission, purpose or governing statutes, such authority shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly. Denial by the governor shall take the form of a signed certification by the governor. Denial by either house of the legislature shall take the form of a resolution by such house. The governor and each house of the legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the legislature receives notification of a proposed transfer during the months of July through December, the legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the governor, senate, and assembly, the public authority may effectuate such transfer. Provided, however, that with respect to a below market transfer by a local authority that is not within the purpose, mission or governing statute of the local authority, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which such local authority resides, and the transfer is of property obtained by the authority from that political subdivision, then such approval shall be sufficient to permit the transfer.

1 b. In the event a below fair market value asset transfer is proposed,  
2 the following information must be provided to the authority board and  
3 the public:

4 (i) a full description of the asset;

5 (ii) an appraisal of the fair market value of the asset and any other  
6 information establishing the fair market value sought by the board;

7 (iii) a description of the purpose of the transfer, and a reasonable  
8 statement of the kind and amount of the benefit to the public resulting  
9 from the transfer, including but not limited to the kind, number,  
10 location, wages or salaries of jobs created or preserved as required by  
11 the transfer, the benefits, if any, to the communities in which the  
12 asset is situated as are required by the transfer;

13 (iv) a statement of the value to be received compared to the fair  
14 market value;

15 (v) the names of any private parties participating in the transfer,  
16 and if different than the statement required by subparagraph (iv) of  
17 this paragraph, a statement of the value to the private party; and

18 (vi) the names of other private parties who have made an offer for  
19 such asset, the value offered, and the purpose for which the asset was  
20 sought to be used.

21 c. Before approving the disposal of any property for less than fair  
22 market value, the board of an authority shall consider the information  
23 described in paragraph b of this subdivision and make a written determi-  
24 nation that there is no reasonable alternative to the proposed below-  
25 market transfer that would achieve the same purpose of such transfer.

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

28 S 51. Jurisdiction. This article shall, subject to the limitations  
29 contained herein, confer upon the office of the state inspector general,  
30 jurisdiction over all covered agencies. For the purposes of this article  
31 "covered agency" shall include all executive branch agencies, depart-  
32 ments, divisions, officers, boards and commissions, public AND LOCAL  
33 authorities, AS DEFINED IN SECTION TWO OF THE PUBLIC AUTHORITIES LAW  
34 (other than multi-state or multi-national authorities), and public bene-  
35 fit corporations, the heads of which are appointed by the governor and  
36 which do not have their own inspector general by statute. Wherever a  
37 covered agency is a board, commission, a public authority or public  
38 benefit corporation, the head of the agency is the chairperson thereof.

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

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

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

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

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