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

3518

2013-2014 Regular Sessions

I N S E N A T E

February 5, 2013

Introduced by Sen. O'BRIEN -- 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 amended by chapter 506 of the laws of 2009, 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 authorities budget office, 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 financial reports, including (i) audited financials in accordance with all applicable regulations and following generally accepted accounting principles as defined in subdivision ten of section two of the state finance law, (ii) grants and subsidy programs, (iii) operating and financial risks, (iv) current ratings if any, of its bonds issued by recognized municipal bond rating agencies and notice of changes in such ratings, and (v) long-term liabilities, including leases and employee benefit plans; (3) its mission statement and measurements including its most recent measurement report; (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 issu-

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

LBD07010-01-3

ance, term, amount, interest rate and means of repayment. 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 in addition to the report described in section twenty-eight hundred six of this title 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; (5-a) biographical information, not including confidential personal information, for all directors and officers and employees for whom salary reporting is required under subparagraph five of this paragraph; (6) the projects undertaken by such authority during the past year; (7) a listing and description, in addition to the report required by paragraph a of subdivision three of section twenty-eight hundred ninety-six of this article of all real property of such authority having an estimated fair market value in excess of fifteen thousand dollars that the authority acquires or disposes of during such period. The report shall contain the price received or paid by the authority and the name of the purchaser or seller for all such property sold or bought by the authority during such period; (8) such authority's code of ethics; (9) an assessment of the effectiveness of its internal control structure and procedures; (10) a copy of the legislation that forms the statutory basis of the authority; (11) a description of the authority and its board structure, including (i) names of committees and committee members, (ii) lists of board meetings and attendance, (iii) descriptions of major authority units, subsidiaries, (iv) number of employees, and (v) organizational chart; (12) its charter, if any, and by-laws; (13) a listing of material changes in operations and programs during the reporting year; (14) at a minimum a four-year financial plan, including (i) a current and projected capital budget, and (ii) an operating budget report, including an actual versus estimated budget, with an analysis and measurement of financial and operating performance; (15) its board performance evaluations provided, however, that such evaluations shall not be subject to disclosure under article six of the public officers law; (16) a description of the total amounts of assets, services or both assets and services bought or sold without competitive bidding, including (i) the nature of those assets and services, (ii) the names of the counterparties, and (iii) where the contract price for assets purchased exceeds fair market value, or where the contract price for assets sold is less than fair market value, a detailed explanation of the justification for making the purchase or sale without competitive bidding, and a certification by the chief executive officer and chief financial officer of the public authority that they have reviewed the terms of such purchase or sale and determined that it complies with applicable law and procurement guidelines; and (17) a description of any material pending litigation in which the authority is involved as a party during the reporting year, except that no provider of medical services need disclose information about pending malpractice claims beyond the existence of such claims.

S 2. Subdivision 2 of section 2801 of the public authorities law, as amended by chapter 506 of the laws of 2009, 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 authorities budget office for their information, annually not more than ninety days and 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 and subdivision 3 as amended by chapter 506 of the laws of 2009, 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 include 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, the legislature and the authorities budget office.

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, subdivision 3 and paragraphs c and d of subdivision 6 as amended and subdivision 7 as added by chapter 506 of the laws of 2009 and paragraph e of subdivision 6 as added by chapter 156 of the laws of 2012, 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, or any interest in real property, 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, and, provided further, that no disposition of any other property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property, shall be made without a similar appraisal.

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 has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were disposed of under paragraphs a and b of this subdivision, would adversely 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; or

(v) under those circumstances permitted by subdivision seven of this section; 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) 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.

e. Disposals and contracts for disposal of real property by the canal corporation may be made by negotiated sale rather than public auction provided that all of the following conditions have been satisfied:

(i) The canal corporation has determined that: such real property is no longer necessary or useful to the purposes of the canal corporation; disposal of such real property complies with all applicable provisions of the canal law; and disposal of such real property is in the best interest of the canal corporation;

(ii) An appraisal of the fair market value of such property has been made by an independent appraiser and included in the record of the transaction;

(iii) The fair market value of such real property is greater than fifteen thousand dollars but not greater than seventy-five thousand dollars;

(iv) Such real property was improved prior to April first, nineteen hundred ninety-two under a municipal permit or a permit issued pursuant to section one hundred of the canal law, thereby creating an encroachment on canal corporation real property;

(v) The purchaser of such real property is, or will be, the owner of the improvement that either fully or partially encroaches on canal corporation real property; and

(vi) The consideration paid for such real property will be not less than the fair market value of the real property exclusive of the value, fair market or otherwise, of the encroaching improvements.

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.

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

(i) a full description of the asset;

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

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

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

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

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

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

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, departments, 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.