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

8094

I N S E N A T E

June 12, 2016

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public authorities law, in relation to the New York state design and construction corporation act

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

Section 1. Section 1678-a of the public authorities law, as added by section 1 of part RR of chapter 54 of the laws of 2016, is amended to read as follows:

S 1678-a. New York state design and construction corporation act. 1. Purposes of act. The purposes of the New York state design and construction corporation act are to establish the New York state design and construction corporation to provide (a) additional project management expertise, monitoring and oversight on INDIVIDUAL public works projects each having a total or aggregate construction value in excess of fifty million dollars undertaken by state agencies, state departments subject to the provisions of this section, and state authorities including one created by chapter one hundred fifty-four of the laws of nineteen hundred twenty-one and one created by chapter eight hundred twenty-four of the laws of nineteen hundred thirty-three herein after referred to as "state entity"; and (b) a means to implement and recommend improvements and other project changes on such proposed INDIVIDUAL public works projects in excess of fifty million dollars in total or aggregate value, in a more timely fashion, to ensure that such projects can be accomplished, to the extent practicable, on time, within budget and at an acceptable overall quality and cost to the state of New York.

2. New York state design and construction corporation. (a) There is hereby established the New York state design and construction corporation as a subsidiary corporation of the dormitory authority.

(b) The dormitory authority may provide or lease to such subsidiary corporation any real, personal or mixed property as shall be required in order to carry out the purposes of this act. THE DORMITORY AUTHORITY MAY NOT LEASE EMPLOYEES OF THE DORMITORY AUTHORITY TO SUCH SUBSIDIARY CORPORATION FOR PURPOSES OF THIS SECTION. The authority may assign any

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

LBD15830-02-6

such employees to work for the corporation as shall be required in order to carry out the purposes of this section and all such employees shall retain their respective civil service classifications, seniority, status, and rights pursuant to their collective bargaining units and/or collective bargaining agreements, as applicable. ANY EMPLOYEE ASSIGNED PURSUANT TO THIS SECTION SHALL REMAIN IN HIS OR HER COLLECTIVE BARGAINING UNIT, AND NO EMPLOYEE SHALL RECEIVE A REDUCTION IN SALARY OR BENEFITS DUE TO SUCH ASSIGNMENT. Notwithstanding any provision of law to the contrary, the term "employee" as set forth in this section shall mean a dormitory authority employee assigned, in whole, or in part, to work for the corporation.

(c) Such corporation shall be a body corporate and politic constituting a public benefit corporation, and shall have all of the privileges, immunities, tax exemptions and other exemptions of the dormitory authority to the extent the same are not inconsistent with this section.

(d) The board of the corporation shall consist of three members as designated by the governor, and the governor shall designate the chair from among the members of the corporation's board. The members of the corporation's board shall serve until such time as his or her successor is appointed by the governor.

(e) A quorum shall consist of a majority of the members of the board. A quorum shall be required for the board to conduct business, and approval of any matter properly before the board shall require the affirmative vote of the majority of the board. Meetings of the corporation shall be called by the chair, or by a majority of the members appointed. Meetings shall be held at least bi-annually.

(f) Nothing in this subdivision shall be construed to impose any liabilities, obligations or responsibilities of such corporation upon the dormitory authority, and the authority shall have no liability or responsibility therefor unless the authority expressly agrees by resolution of the authority board to assume the same.

(g) The provisions of section sixteen hundred ninety-one of this title shall in all respects apply to members of the corporation and any officer, employee or agent of the dormitory authority [transferred or] assigned to the corporation, while acting within the scope of his, her or its authority.

(h) All of the provisions of sections seventeen and nineteen of the public officers law shall apply to the members, directors, officers and employees of the corporation.

(i) The corporation created pursuant to this section shall be subject to any other provisions of this chapter pertaining to subsidiaries of public authorities to the extent that such provisions are not inconsistent with the provisions of this section.

3. Corporation review and oversight of certain public works contracts. For INDIVIDUAL public works projects having a total or aggregate construction value in excess of fifty million dollars, hereinafter referred to as "covered projects", and for any and all contracts relating to such covered projects which are advertised for bid or proposal or otherwise procured and/or entered into on or after January first, two thousand sixteen:

(a) Any state entity proposing a covered project shall provide written notice to the corporation of such proposal, to include without limitation, the estimated value of the covered project and a summary of the scope and duration of such covered project. Projects shall not be divided or segmented for the purposes of avoiding compliance with the provisions of this act. For purposes of this section, "covered project"

shall not include capital projects of the office of state comptroller, office of the attorney general or education department of the state of New York.

(b) The corporation shall have the authority to, and may, in its sole discretion, review, monitor, and oversee, in whole or in part, such covered project, and make recommendations regarding necessary corrective or other action to any state entity in connection with such covered project provided that the corporation, in its sole discretion, deems such covered project to be at risk of being delayed, not being completed within budget, or not completed at an acceptable level of quality.

(c) For the purposes of this section, the term "project" shall mean any work associated with the planning, acquisition, design, engineering, environmental analysis, construction, reconstruction, restoration, rehabilitation, establishment, improvement, renovation, extension, repair, revitalization, management and development of a capital asset as defined in section two of the state finance law.

(d) The state entity undertaking such covered project shall cooperate in good faith with the corporation, and provide reasonable access to all personnel, books, records, plans, specifications, data and other information as may be necessary for the corporation to perform its duties. The corporation shall limit its request for access to such information that is reasonably necessary, as determined by the corporation to perform its duties.

(e) In the event the corporation determines that corrective or other action is necessary for such covered project, then the corporation shall provide the state entity with written notice of what corrective or other actions the corporation recommends as necessary to accomplish the project, to the extent practicable, on time, within budget and at an acceptable overall cost to the state of New York. Such corrective or other action may include, but not be limited to:

(i) Modification of such plans, schedules, specifications, designs and estimates of costs for the construction of the project and equipment of facilities;

(ii) Detailed analysis of the project schedule so as to cure delays that may have occurred or prevent future delay;

(iii) Detailed analysis of project budget;

(iv) Detailed analysis of change orders and/or payments to prime contractors, subcontractors and other parties;

(v) Detailed analysis of records of construction observations, inspections and deficiencies;

(vi) Exercise of applicable rights and/or remedies with respect to contracts, contractors, subcontractors or other consultants;

(vii) Procurement of independent auditors, project managers, legal counsel, or other professionals for the benefit of the project;

(viii) Regular reporting of project status and milestones to the corporation;

(ix) Active project management review and oversight utilizing additional resources provided by the corporation; and

(x) Periodic project review and audit by the corporation on a suitable time interval determined by the corporation.

The state entity undertaking the project shall have a period of thirty days, or shorter if the corporation determines that a shorter period is required by the circumstances or longer if the corporation consents, from receipt of written notice of recommended corrective action from the corporation, to notify the corporation in writing of its acceptance or rejection of the corrective or other action. In the event that the state

entity rejects any corrective or other action, in whole or in part, it shall provide simultaneous written notice to the corporation accompanied by a reasoned explanation in support of its rejection. Such rejection shall be reported to the secretary to the governor and the director of the division of budget within fifteen days of its receipt by the corporation.

(f) Any state entity proposing a covered project shall include a summary of the provisions of this section in all such proposal and/or bid documents for such projects.

4. General powers and duties of the corporation. (a) The corporation shall have the power to:

(i) Sue and be sued;

(ii) Have a seal and alter the same at pleasure;

(iii) Make and alter by-laws for its organization and internal management and make rules and regulations governing same;

(iv) [Appoint] ASSIGN such officers and employees from the officers and employees of the authority, as it may require for the performance of its duties [and fix and determine their qualifications, duties, and compensation, and retain or employ counsel, auditors, private financial consultants, professional engineers or other technical consultants and other services on a contract basis or otherwise, for the rendering of professional, business or technical services and advice];

(v) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this section;

(vi) Engage the services of private consultants on a contract basis for rendering professional and technical assistance advice relating to covered projects IF SUCH SERVICES AND ASSISTANCE ARE NOT CURRENTLY AVAILABLE AT THE DORMITORY AUTHORITY;

(vii) Procure insurance against any loss in connection with its activities, properties and other assets, in such amount and from such insurance as it deems desirable; and

(viii) Invest any funds of the corporation, or any other monies under its custody and control not required for immediate use or disbursement, at the discretion of the corporation, in obligations of the state or the United States government or obligations the principal and interest of which are obligations in which the comptroller of the state is authorized to invest pursuant to section ninety-eight of the state finance law.

(b) The corporation may do any and all things necessary [or convenient] to carry out and exercise the powers given and granted by this section.

(c) Notwithstanding any other provision of law, to the contrary, all state entities and their officers shall cooperate with the corporation in good faith and may implement the recommendations of the corporation.

S 2. This act shall take effect immediately, provided, however, that the amendments to section 1678-a of the public authorities law made by section one of this act shall not affect the repeal of such section and shall be deemed repealed therewith.