

STATE OF NEW YORK

7697--A

IN SENATE

February 9, 2018

Introduced by Sens. DeFRANCISCO, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, in relation to project applications and advisory opinions of the public authorities control board

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 2, 3, 3-a, 4 and 5 of section 51 of the public
2 authorities law are renumbered subdivisions 6, 7, 7-a, 8 and 9 and four
3 new subdivisions 2, 3, 4 and 5 are added to read as follows:

4 2. Any application made concerning a proposed project involving a loan
5 shall include, expressly and in writing, the terms, conditions and dates
6 of the repayment of state appropriations authorized by law pursuant to a
7 repayment agreement and shall include a copy of the proposed repayment
8 agreement. In any such application the terms and conditions, provided
9 expressly and in writing, shall include, but not be limited to:

10 a. Any job retention or job creation requirements and the terms of any
11 such requirements, where such loan would be conditional on any job
12 retention or job creation requirements, a description of any contractual
13 clawback provisions or other remedies in the event such requirements are
14 not met;

15 b. Rate of interest, for fixed rate agreements;

16 c. All terms necessary to determine and calculate interest for non-
17 fixed rate loan agreements;

18 d. Repayment date, or dates, and associated amounts, for the return of
19 loan principal;

20 e. Any conditions or restrictions associated with the loan, the terms
21 of such conditions or restrictions, and any contractual remedy if such
22 conditions or restrictions in the event of a breach of such terms;

23 f. Any security provision and a description of such provisions; and

24 g. Any guarantee associated with such loan.

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

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1 3. Any application made concerning a proposed project involving a
2 grant shall include, expressly and in writing, the terms and conditions
3 of state appropriations authorized by law pursuant to a grant disburse-
4 ment agreement and pursuant to any other agreements which would relate
5 to such grant. In any such application the terms and conditions,
6 provided expressly and in writing, shall include, but not be limited to:

7 a. Any job retention or job creation requirements and the terms of any
8 such requirements, where such loan would be conditional on any job
9 retention or job creation requirements, a description of any contractual
10 clawback provisions or other remedies in the event such requirements are
11 not met;

12 b. A full description of the project and how the grant funds would be
13 used by the grantee;

14 c. Where such project would involve the purchase of real property, a
15 description of who would own the property;

16 d. Total cost of the project;

17 e. A list of all sources of funds for such project and a description
18 of each source of funds;

19 f. A list of all uses of funds for such project and a description of
20 each use of funds;

21 g. An conditions or restrictions on the grantee, the terms of such
22 conditions or restrictions, and any contractual remedies in the event of
23 a breach of such terms;

24 h. A description of the ownership;

25 i. A description of any lease agreements;

26 j. Any security provisions; and

27 k. Any guarantees associated with such grant.

28 4. Notwithstanding any law to the contrary, any project submitted to
29 the public authorities control board involving a loan or grant where
30 such loan or grant would be conditional on job retention or job creation
31 requirements shall include clawback provisions if such job requirements
32 are not met. The board may approve such projects only upon its determi-
33 nation that:

34 a. Such submitted project includes, expressly and in writing, clawback
35 provisions, in the event job retention or job creation requirements are
36 not met; and

37 b. Prior to grant disbursement, such applicant will submit to the
38 public authorities control board a binding letter of agreement between
39 the applicant and the grantee or loan recipient, or any beneficiaries of
40 such loan or grant who would be expected to retain or create jobs,
41 expressly and in writing attesting that they agreed to the job creation
42 or job retention clawback requirements as a precondition to receiving
43 the grant or loan.

44 5. A public benefit corporation subject to the provisions of this
45 section may submit to the public authorities control board a potential
46 project for comment from the public authorities control board. Such
47 preliminary project shall be submitted to all public authorities control
48 board members and all members as well as the state comptroller, and each
49 shall have thirty days to comment on the preliminary project, if they so
50 choose. Any such comments shall be filed by the public authorities
51 control board and transmitted to the relevant public benefit corpo-
52 ration. Any such comment shall be purely advisory, shall have no binding
53 effect on any future decision of the public authorities control board,
54 and shall not provide approval for any project.

1 § 2. Subdivisions 8 and 9 of section 51 of the public authorities law,
2 as added by chapter 838 of the laws of 1983 and as renumbered by section
3 one of this act, are amended to read as follows:

4 8. Notwithstanding any other provisions of this section, the require-
5 ments of subdivisions one, [~~two~~ six and [~~three~~ seven of this section
6 shall not apply with regard to any project of the New York state envi-
7 ronmental facilities corporation, the New York state housing finance
8 agency, the New York state medical care facilities finance agency or the
9 dormitory authority in progress on the first day of April, nineteen
10 hundred seventy-six, with regard to any project of the New York state
11 project finance agency or the New York state urban development corpo-
12 ration in progress on the first day of April, nineteen hundred seventy-
13 eight, with regard to any project of the job development authority or
14 the battery park city authority in progress on the first day of July,
15 nineteen hundred eighty, and with regard to a project of any other
16 public benefit corporation subject to the provisions of this section in
17 progress on the first day of July, nineteen hundred eighty-three, as
18 determined by the New York state public authorities control board whose
19 affirmative determination shall be conclusive as to all matters of law
20 and fact for the purpose of the limitations of this section.

21 9. Nothing contained in subdivisions one, [~~two~~ six and [~~three~~ seven
22 of this section shall limit the right or obligation of any public bene-
23 fit corporation subject to the provisions of this section to comply with
24 the provisions of any existing contract, including any existing contract
25 with or for the benefit of the holders of any obligations of any public
26 benefit corporation.

27 § 3. This act shall take effect immediately.