STATE OF NEW YORK

2766

2019-2020 Regular Sessions

IN SENATE

January 29, 2019

Introduced by Sen. COMRIE -- 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, 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:

Section 1. Subdivisions 2, 3, 3-a, 4 and 5 of section 51 of the public authorities law are renumbered subdivisions 6, 7, 8, 9 and 10 and four new subdivisions 2, 3, 4 and 5 are added to read as follows:

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

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

b. Rate of interest, for fixed rate agreements;

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

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

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

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

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

LBD06134-01-9

g. Any guarantee associated with such loan.

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

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

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

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

d. Total cost of the project;

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

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

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

h. A description of the ownership;

i. A description of any lease agreements;

j. Any security provisions; and

k. Any guarantees associated with such grant.

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

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

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

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

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

9. Notwithstanding any other provisions of this section, the requirements of subdivisions one, [~~two~~] **six** and [~~three~~] **seven** of this section shall not apply with regard to any project of the New York state environmental facilities corporation, the New York state housing finance agency, the New York state medical care facilities finance agency or the dormitory authority in progress on the first day of April, nineteen hundred seventy-six, with regard to any project of the New York state project finance agency or the New York state urban development corporation in progress on the first day of April, nineteen hundred seventy-eight, with regard to any project of the job development authority or the battery park city authority in progress on the first day of July, nineteen hundred eighty, and with regard to a project of any other public benefit corporation subject to the provisions of this section in progress on the first day of July, nineteen hundred eighty-three, as determined by the New York state public authorities control board whose affirmative determination shall be conclusive as to all matters of law and fact for the purpose of the limitations of this section.

10. Nothing contained in subdivisions one, [~~two~~] **six** and [~~three~~] **seven** of this section shall limit the right or obligation of any public benefit corporation subject to the provisions of this section to comply with the provisions of any existing contract, including any existing contract with or for the benefit of the holders of any obligations of any public benefit corporation.

§ 3. This act shall take effect immediately.