

# STATE OF NEW YORK

4720--A

2019-2020 Regular Sessions

## IN SENATE

March 21, 2019

Introduced by Sens. MAYER, SKOUFIS, BIAGGI, HARCKHAM, KRUEGER, METZGER, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- recommitted to the Committee on Local Government in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, in relation to industrial development agencies

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

Section 1. Section 859-a of the general municipal law, as added by chapter 356 of the laws of 1993 and subdivisions 4, 5 and 6 as added by chapter 563 of the laws of 2015, is amended to read as follows:

§ 859-a. Additional prerequisites to the provisions of financial assistance or payments in lieu of taxes. Prior to providing any financial assistance or payments in lieu of taxes of more than one hundred thousand dollars to any project, the agency must comply with the following prerequisites:

1. The agency must adopt a resolution describing the project and the financial assistance or payments in lieu of taxes that the agency is contemplating with respect to such project. Such assistance or payments in lieu of taxes shall be consistent with the uniform tax exemption policy adopted by the agency pursuant to subdivision four of section eight hundred seventy-four of this ~~chapter~~ title, unless the agency has followed the procedures for deviation from such policy specified in paragraph (b) of such subdivision.

2. The agency must hold a public hearing with respect to the project and the proposed financial assistance or payments in lieu of taxes being contemplated by the agency. Said public hearing shall be held in a city, town or village where the project proposes to locate. At said public hearing, interested parties shall be provided reasonable opportunity,

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

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1 both orally and in writing, to present their views with respect to the  
2 project.

3 3. The agency must give at least ten days published notice of said  
4 public hearing and shall, at the same time, provide notice of such hear-  
5 ing to the chief executive officer of each affected tax jurisdiction  
6 within which the project is located, each school board president and  
7 superintendent of each school district within which the project is  
8 located, and to all state senators and members of the state assembly who  
9 represent any portion of any affected tax jurisdiction that is subject  
10 to the proposed financial assistance or payments in lieu of taxes. The  
11 notice of hearing must state the time and place of the hearing, contain  
12 a general, functional description of the project, describe the prospec-  
13 tive location of the project, identify the initial owner, operator or  
14 manager of the project and generally describe the financial assistance  
15 or payments in lieu of taxes contemplated by the agency with respect to  
16 the project.

17 4. Each agency shall develop a standard application form, which shall  
18 be used by the agency to accept requests for financial assistance or  
19 payments in lieu of taxes from all individuals, firms, companies, devel-  
20 opers or other entities or organizations. The standard application form  
21 shall be submitted by or on behalf of the applicant, and subscribed and  
22 affirmed under the penalties of perjury by the applicant, or on behalf  
23 of the applicant by the chief executive officer or such other individual  
24 that is duly authorized to bind the applicant, as true, accurate and  
25 complete to the best of his or her knowledge. The standard application  
26 form shall include the following, and may include such other supple-  
27 mental information as determined to be necessary and appropriate by the  
28 agency, including supporting documents and information provided by or on  
29 behalf of the applicant:

30 (a) the name and address of the project applicant;

31 (b) a description of the proposed project for which financial assist-  
32 ance or payments in lieu of taxes is requested, including the type of  
33 project, proposed location and purpose of the project;

34 (c) the amount and type of financial assistance or payments in lieu of  
35 taxes being requested, including the estimated value of each type of tax  
36 exemption sought to be claimed by reason of agency involvement in the  
37 project;

38 (d) a statement that there is a likelihood that the project would not  
39 be undertaken but for the financial assistance or payments in lieu of  
40 taxes provided by the agency or, if the project could be undertaken  
41 without financial assistance or payments in lieu of taxes provided by  
42 the agency, a statement indicating why the project should be undertaken  
43 by the agency;

44 (e) an estimate of capital costs of the project, including all costs  
45 of real property and equipment acquisition and building construction or  
46 reconstruction, financed from private sector sources, an estimate of the  
47 percentage of project costs financed from public sector sources, and an  
48 estimate of both the amount to be invested by the applicant and the  
49 amount to be borrowed to finance the project[-];

50 (f) the projected number of full time equivalent jobs that would be  
51 retained and that would be created if the request for financial assist-  
52 ance or payments in lieu of taxes is granted, the projected timeframe  
53 for the creation of new jobs, the estimated salary and fringe benefit  
54 averages or ranges for categories of the jobs that would be retained or  
55 created if the request for financial assistance or payments in lieu of  
56 taxes is granted, and an estimate of the number of residents of the

1 economic development region as established pursuant to section two  
2 hundred thirty of the economic development law or the labor market area  
3 as defined by the agency, in which the project is located that would  
4 fill such jobs. The labor market area defined by the agency for this  
5 purpose may include no more than six contiguous counties in the state,  
6 including the county in which the project is to be located;

7 (g) a statement to the effect that the provisions of subdivision one  
8 of section eight hundred sixty-two of this [~~chapter~~] title will not be  
9 violated if financial assistance or payments in lieu of taxes is  
10 provided for the proposed project;

11 (h) a statement that the owner, occupant or operator receiving finan-  
12 cial assistance or payments in lieu of taxes is in substantial compli-  
13 ance with applicable local, state and federal tax, worker protection and  
14 environmental laws, rules and regulations; and

15 (i) a statement acknowledging that the submission of any knowingly  
16 false or knowingly misleading information may lead to the immediate  
17 termination of any financial assistance or payments in lieu of taxes and  
18 the reimbursement of an amount equal to all or part of any tax  
19 exemptions claimed by reason of agency involvement in the project.

20 5. Each agency shall develop, and adopt by resolution, uniform crite-  
21 ria for the evaluation and selection for each category of projects for  
22 which financial assistance or payments in lieu of taxes will be  
23 provided. At a minimum, the criteria shall require that, for each  
24 project, the following must occur prior to the approval of the provision  
25 of financial assistance or payments in lieu of taxes:

26 (a) an assessment by the agency of all material information included  
27 in connection with the application for financial assistance or payments  
28 in lieu of taxes, as necessary to afford a reasonable basis for the  
29 decision by the agency to provide financial assistance or payments in  
30 lieu of taxes for the project;

31 (b) a written cost-benefit analysis by the agency that identifies the  
32 extent to which a project will create or retain permanent, private  
33 sector jobs; the estimated value of any tax exemptions to be provided;  
34 the amount of private sector investment generated or likely to be gener-  
35 ated by the proposed project; the likelihood of accomplishing the  
36 proposed project in a timely fashion; and the extent to which the  
37 proposed project will provide additional sources of revenue for munici-  
38 palities and school districts; and any other public benefits that might  
39 occur as a result of the project;

40 (c) a statement by the applicant that the project, as of the date of  
41 the application, is in substantial compliance with all provisions of  
42 this article including, but not limited to, the provisions of this  
43 section and subdivision one of section eight hundred sixty-two of this  
44 [~~chapter~~] title; and

45 (d) if the project involves the removal or abandonment of a facility  
46 or plant within the state, notification by the agency to the chief exec-  
47 utive officer or officers of the municipality or municipalities in which  
48 the facility or plant was located.

49 6. Each agency shall develop a uniform agency project agreement that  
50 sets forth terms and conditions under which financial assistance or  
51 payments in lieu of taxes shall be provided. The uniform agency project  
52 agreement shall be used by the agency and no financial assistance or  
53 payments in lieu of taxes shall be provided in the absence of the  
54 execution of such an agreement. The uniform agency project agreement  
55 shall, at a minimum:

(a) describe the project and the financial assistance or payments in lieu of taxes, including the amount and type, to be provided, and the agency purpose to be achieved;

(b) require each project owner, occupant or operator receiving financial benefits or payments in lieu of taxes to provide annually a certified statement and documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the financial assistance or payments in lieu of taxes, by category, including full time equivalent independent contractors or employees of independent contractors that work at the project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created[~~+~~];

(c) indicate the dates when PILOT payments are to be made and provide an estimate of the amounts for each affected tax jurisdiction of any payments in lieu of taxes that are included as part of the transaction, or formula or formulas by which those amounts may be calculated. In lieu of providing such information, a copy of an executed payment in lieu of tax agreement that contains the same information may be attached to the uniform agency project agreement;

(e) provide for the suspension or discontinuance of financial assistance or payments in lieu of taxes, or for the modification of any payment in lieu of tax agreement to require increased payments, in accordance with policies developed by the agency pursuant to section eight hundred seventy-four of this title;

(f) provide for the return of all or a part of the financial assistance or payments in lieu of taxes provided for the project, including all or part of the amount of any tax exemptions, which shall be redistributed to the appropriate affected tax jurisdiction, as provided for in policies developed by the agency pursuant to section eight hundred seventy-four of this title, unless agreed to otherwise by any local taxing jurisdiction or jurisdictions; and

(g) provide that the owner, occupant or operator receiving financial assistance or payments in lieu of taxes shall certify, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

§ 2. The general municipal law is amended by adding a new section 859-c to read as follows:

§ 859-c. Notice of agenda. A printed calendar of items to be heard, which may be subject to later amendment, shall be made available to the public and forwarded to the members and chairman of the industrial development agency at least three days in advance of the meeting. Where an industrial development agency maintains a website, the notice of agenda shall also be posted on such industrial development agency's website.

§ 3. The general municipal law is amended by adding a new section 859-d to read as follows:

§ 859-d. School board reporting. Every industrial development agency, continued or created by this chapter or any other law of the state shall submit to the local school board president and superintendent or boards presidents and superintendents overlapping with an industrial development agency, within ninety days after the end of its fiscal year, a copy of the final report required by subdivision two of section twenty-eight

1 hundred of the public authorities law and the audits required by subdi-  
2 vision two of section twenty-eight hundred two of the public authorities  
3 law.

4 § 4. This act shall take effect immediately.