

STATE OF NEW YORK

8961

IN SENATE

September 2, 2020

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

AN ACT to amend the general municipal law and the public authorities law, in relation to the purposes and powers of industrial development agencies and to improve the accountability and transparency of such agencies; to amend the public authorities law, in relation to extending the bond issuance charge to the debt issued by not-for-profit corporations acting on behalf of the state or its political subdivisions; to amend the not-for-profit corporation law, in relation to the purposes and powers of local development corporations and certain other not-for-profit corporations thereof; and to repeal subdivision 3 of section 859 of the general municipal law relating to an evaluation of the activities of industrial development agencies and authorities in the state prepared by an entity independent of the department

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

1 Section 1. Subdivisions 4 and 14 of section 854 of the general municipal law, subdivision 4 as amended by section 6 of part J of chapter 59
2 of the laws of 2013 and subdivision 14 as added by chapter 356 of the
3 laws of 1993, are amended and a new subdivision 21 is added to read as
4 follows:
5
6 (4) "Project" - shall mean any land, any building or other improvement,
7 and all real and personal properties located within the state of
8 New York and within or outside or partially within and partially outside
9 the municipality for whose benefit the agency was created, including,
10 but not limited to, machinery, equipment and other facilities deemed
11 necessary or desirable in connection therewith, or incidental thereto,
12 whether or not now in existence or under construction, which shall be
13 suitable for manufacturing, warehousing, research, civic, commercial or
14 industrial purposes or other economically sound purposes identified and
15 called for to implement a state designated urban cultural park management
16 plan as provided in title G of the parks, recreation and historic
17 preservation law and which may include or mean an industrial pollution
18 control facility, a recreation facility, educational or cultural facility

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

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ty, a horse racing facility, a railroad facility, a continuing care retirement community, or a civic facility, provided, however, that, of agencies governed by this article, only agencies created for the benefit of a county and the agency created for the benefit for the city of New York shall provide financial assistance in any respect to a continuing care retirement community, or an automobile racing facility, provided, however, no agency shall use its funds or provide financial assistance in respect of any project wholly or partially outside the municipality for whose benefit the agency was created without the prior consent thereto by the governing body or bodies of all the other municipalities in which a part or parts of the project is, or is to be, located, and such portion of the project located outside such municipality for whose benefit the agency was created shall be contiguous with the portion of the project inside such municipality. Provided further, however, that no agency shall provide financial assistance for any project where the project applicant has any agreement to subsequently contract with a municipality for the lease or purchase of such project or project facility.

(14) "Financial assistance" - shall mean the proceeds of bonds issued by an agency, straight-leases, grants, loans, or exemptions from taxation claimed by a project occupant as a result of an agency taking title, possession or control (by lease, license or otherwise) to the property or equipment of such project occupant or of such project occupant acting as an agent of an agency.

(21) "Civic facility" shall mean a facility to be owned or occupied by a municipal corporation, a district corporation, or a not-for-profit corporation organized and existing under the laws of this state or authorized to conduct activities in this state; provided that such facilities shall be limited to medical facilities including those defined in article twenty-eight of the public health law, educational facilities, recreational facilities for public use, facilities used for municipal government or public safety purposes, or housing facilities primarily designed to be occupied by individuals sixty years of age or older. Nothing in this article shall be deemed to waive any applicable requirement for an operating facility certificate, consent or other approval as provided by law.

§ 2. Subdivision 2 of section 856 of the general municipal law, as amended by chapter 356 of the laws of 1993, is amended to read as follows:

2. An agency shall be a corporate governmental agency, constituting a public benefit corporation. Except as otherwise provided by special act of the legislature, an agency shall consist of not less than [~~three~~] five nor more than seven members who shall be appointed by the governing body of each municipality and who shall serve at the pleasure of the appointing authority. Such members may include representatives of local government, school boards, organized labor and business. A member shall continue to hold office until his successor is appointed and has qualified. The governing body of each municipality shall designate the first chairman and file with the secretary of state a certificate of appointment or reappointment of any member. Such members shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties.

§ 3. Section 858 of the general municipal law, as added by chapter 1030 of the laws of 1969, the opening paragraph as amended by chapter 478 of the laws of 2011, subdivision 4 as amended by chapter 747 of the

laws of 2005, subdivision 9 as amended by chapter 444 of the laws of 1997, subdivision 8 as amended and subdivision 15 as added by chapter 356 of the laws of 1993, and subdivisions 16, 17, and 19 as amended and subdivision 18 as added by chapter 109 of the laws of 2020, is amended to read as follows:

§ 858. Purposes and powers of the agency. The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities including industrial pollution control facilities, educational or cultural facilities, civic facilities, railroad facilities, horse racing facilities, automobile racing facilities and continuing care retirement communities, provided, however, that, of agencies governed by this article, only agencies created for the benefit of a county and the agency created for the benefit of the city of New York shall be authorized to provide financial assistance in any respect to a continuing care retirement community, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the state of New York and to improve their recreation opportunities, prosperity and standard of living; and to carry out the aforesaid purposes, each agency shall have the following powers:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold and dispose of personal property for its corporate purposes;

(4) To acquire by purchase, grant, lease, gift, pursuant to the provisions of the eminent domain procedure law, or otherwise and to use, real property or rights or easements therein necessary for its corporate purposes in compliance with the local zoning and planning regulations and shall take into consideration regional and local comprehensive land use plans and state designated heritage area management plans, and to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of any such property in such manner as the agency shall determine. In the case of railroad facilities, however, the phrase to use real property or rights or easements therein shall not be interpreted to include operation by the agency of rail service upon or in conjunction with such facilities[~~+~~];

(5) To acquire real property from a municipality as necessary for its corporate purposes pursuant to section eight hundred fifty-eight-c of this title;

(6) To make by-laws for the management and regulation of its affairs and, subject to agreements with its bondholders, for the regulation of the use of a project or projects[~~+~~];

[~~(6)~~] (7) With the consent of the municipality, to use agents, employees and facilities of the municipality, paying the municipality its agreed proportion of the compensation or costs;

[~~(7)~~] (8) To appoint officers, agents and employees, to prescribe their qualifications and to fix their compensation and to pay the same out of funds of the agency;

[~~(8)~~] (9) (a) To appoint an attorney, who may be the counsel of the municipality, and to fix the attorney's compensation for services which shall be payable to the attorney, and to retain and employ private consultants for professional and technical assistance and advice;

(b) An attorney acting as bond counsel for a project must file with the agency a written statement in which the attorney identifies each party to the transaction which such attorney represents. If bond counsel

1 provides any legal services to parties other than the agency the written
2 statement must describe the nature of legal services provided by such
3 bond counsel to all parties to the transaction, including the nature of
4 the services provided to the agency[~~+~~];

5 [~~(9)~~] (10) To make contracts and leases, and to execute all instru-
6 ments necessary or convenient to or with any person, firm, partnership
7 or corporation, either public or private; provided, however, that any
8 extension of an existing contract, lease or other agreement entered into
9 by an agency with respect to a project shall be guided by the provisions
10 of this article;

11 [~~(10)~~] (11) To acquire, construct, reconstruct, lease, improve, main-
12 tain, equip or furnish one or more projects;

13 [~~(11)~~] (12) To accept gifts, grants, loans, or contributions from, and
14 enter into contracts or other transactions with, the United States and
15 the state or any agency of either of them, any municipality, any public
16 or private corporation or any other legal entity, and to use any such
17 gifts, grants, loans or contributions for any of its corporate purposes;

18 (13) To provide financial assistance in the form of loans to improve,
19 maintain or equip one or more projects consistent with its corporate
20 purposes;

21 (14) To provide financial assistance in the form of grants for one or
22 more projects consistent with its corporate purposes;

23 [~~(12)~~] (15) To borrow money and to issue bonds and to provide for the
24 rights of the holders thereof;

25 [~~(13)~~] (16) To grant options to renew any lease with respect to any
26 project or projects and to grant options to buy any project at such
27 price as the agency may deem desirable;

28 [~~(14)~~] (17) To designate the depositories of its money either within
29 or without the state;

30 [~~(15)~~] (18) To enter into agreements requiring payments in lieu of
31 taxes. Such agreements shall be in writing and in addition to other
32 terms shall contain: the amount due annually to each affected tax juris-
33 diction (or a formula by which the amount due can be calculated), the
34 name and address of the person, office or agency to which payment shall
35 be delivered, the date on which payment shall be made, and the date on
36 which payment shall be considered delinquent if not paid. Unless other-
37 wise agreed by the affected tax jurisdictions, any such agreement shall
38 provide that payments in lieu of taxes shall be allocated among affected
39 tax jurisdictions in proportion to the amount of real property tax and
40 other taxes which would have been received by each affected tax juris-
41 diction had the project not been tax exempt due to the status of the
42 agency involved in the project. A copy of any such agreement shall be
43 delivered to each affected tax jurisdiction within fifteen days of sign-
44 ing the agreement[~~+~~ In the absence of any such written agreement,
45 payments in lieu of taxes made by an agency shall be allocated in the
46 same proportions as they had been prior to January first, nineteen
47 hundred ninety-three for so long as the agency's activities render a
48 project non-taxable by affected tax jurisdictions] and published by the
49 agency on its website;

50 [~~(16)~~] (19) To establish and re-establish its fiscal year;

51 [~~(17)~~] (20) To provide loans to small businesses or not-for-profit
52 corporations as authorized in section eight hundred fifty-nine-c of this
53 title; and

54 [~~(18)~~] (21) To provide grants to small businesses and not-for-profit
55 corporations, as defined in section eight hundred fifty-nine-c of this
56 title, for the purpose of acquiring personal protective equipment or

installing fixtures necessary to prevent the spread of novel coronavirus, COVID-19, during the period in which executive order two hundred two of two thousand twenty, as amended, is in effect. In order to be eligible for a grant pursuant to this subdivision, a small business or not-for-profit corporation must meet the requirements of paragraph a of subdivision three of section eight hundred fifty-nine-c of this title. No industrial development agency may provide a small business or not-for-profit corporation with more than ten thousand dollars pursuant to this subdivision; and

[~~(19)~~] (22) To [~~do all things necessary or convenient to~~] carry out its purposes and exercise [~~the~~] those powers expressly given in this title.

§ 4. The general municipal law is amended by adding a new section 858-c to read as follows:

§ 858-c. Purchase or lease of real property owned by a county, city, town or village. 1. The local legislative body of a county, city, town or village may by resolution determine that specifically described real property owned by the county, city, town or village is not required for use by such county, city, town or village and authorize the county, city, town or village to sell or lease such real property to an agency; provided, however, that title to such land be not declared inalienable as a forest preserve or a parkland.

2. Notwithstanding the provisions of any general, special or local law, charter or ordinance to the contrary, such sale or lease may be made without appraisal, public notice (except as provided in subdivision four of this section), or public bidding for such price or rental and upon such terms as may be agreed upon between the county, city, town or village and said agency; provided, however, that in the case of a lease the term may not exceed ninety-nine years and provided, further, that in cities having a population of one million or more, no such sale or lease shall be made without the approval of a majority of the members of the borough board of the borough in which such real property is located.

3. Before any sale or lease to an agency shall be authorized, a public hearing shall be held by the local legislative body or borough board to consider the proposed sale or lease.

4. Notice of such hearing shall be published at least ten days before the date set for the hearing in such publication and in such manner as may be designated by the local legislative body or borough board. Such notice shall include a description of the real property proposed to be sold or leased; a statement of the estimated fair market value of the real property proposed to be sold or leased; the value of the financial consideration to be received by the county, city, town or village from such sale or lease of the real property; and a statement of the intended use or disposition of such real property by the agency.

§ 5. Subdivision 3 of section 859 of the general municipal law is REPEALED.

§ 6. The opening paragraph and subdivisions 1 and 2 of section 859-a of the general municipal law, as added by chapter 356 of the laws of 1993, are amended and a new subdivision 3-a is added to read as follows:

Prior to providing any financial assistance [~~of~~] totaling 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 type and amount of financial assistance that the agency is contemplating with respect to such project. Such assistance shall be consistent with the uniform [~~tax-exemption~~] financial assistance policy adopted by the

1 agency pursuant to subdivision four of section eight hundred seventy-
2 four of this [~~chapter~~] title, unless the agency has followed the proce-
3 dures for deviation from such policy specified in paragraph (b) of such
4 subdivision.

5 2. The agency must hold a public hearing with respect to the project
6 and the proposed financial assistance being contemplated by the agency
7 not less than thirty days prior to executing a written agreement to
8 provide financial assistance. Said public hearing shall be held in [~~a~~]
9 each city, town or village where the project to receive financial
10 assistance is located or proposes to locate. At said public hearing,
11 interested parties shall be provided reasonable opportunity, both orally
12 and in writing, to present their views with respect to the project and
13 the type and amount of financial assistance to be provided. The agency
14 shall also accept written comments up to seven days after such hearing
15 is held.

16 3-a. The agency shall maintain a complete record of the hearing,
17 including all documents, oral statements, and written statements
18 presented at or within seven days following the hearing. All members
19 shall be provided with a copy of such record at least seven days before
20 voting whether to approve financial assistance for the project. Such
21 record shall also be posted on the agency website at the time it is
22 provided to members.

23 § 7. The general municipal law is amended by adding four new sections
24 859-d, 859-e, 859-f and 859-g to read as follows:

25 § 859-d. Project application and approval criteria. 1. The project
26 applicant shall submit an application, developed by the agency, for
27 approval of a proposed project and financial assistance. The agency
28 shall adopt project application review and approval criteria that shall
29 be applied to all project applications under consideration for approval
30 and financial assistance. The decision to approve or not approve finan-
31 cial assistance shall be based on, but not limited to, consideration of
32 the following criteria:

33 (a) Strategic objectives. Consideration is to be given to the purpose
34 of the project, such as the nature of the planned business activity, the
35 extent to which the planned business activity is unrepresented or under-
36 represented in the community, and whether the project involves a busi-
37 ness interested in relocating from outside the state of New York.

38 (b) Job creation. A decision to fund a project shall be based on the
39 number of jobs to be created or retained by the proposed project, the
40 range of projected salaries and benefits associated with jobs to be
41 created, and the benchmarks and timeframes to be used by the project to
42 determine whether it is meeting projected job creation and retention
43 goals.

44 (c) The financial viability of the project. Approval for funding must
45 consider the extent to which the viability and success of the project is
46 dependent on financial assistance from the agency. The agency shall also
47 consider the amount and type of financial assistance being requested,
48 the amount and type of private financing required, the amount and type
49 of capital investment to be provided by the project applicant, and any
50 prior financial assistance provided to the project or to the project
51 applicant.

52 (d) Economic benefits. Funding decisions shall consider the potential
53 economic and financial impact of the project on existing businesses in
54 the area, on the affected tax jurisdictions, and on the local labor
55 market.

1 (e) Legal issues. Consideration shall be given to the project appli-
2 cant's record of compliance with applicable laws and regulations.

3 2. The project application review and approval criteria shall be
4 reviewed and approved annually at a regular meeting of the agency and
5 made available to the public on the agency's website.

6 3. The agency shall provide the director of the authorities budget
7 office with an electronic copy of the application and project review and
8 approval criteria within thirty days of their adoption or revision.

9 4. The agency shall retain a written record of the evaluation of each
10 project application to document its decision to provide or deny finan-
11 cial assistance.

12 § 859-e. Financial assistance agreement. 1. The agency shall enter
13 into a written agreement with the project applicant prior to providing
14 financial assistance. The agreement shall include the following informa-
15 tion:

16 (a) a description of the amount and type of financial assistance to be
17 provided by the agency, including a description and the value of proper-
18 ty conveyed at less than fair market value;

19 (b) a description of the amount of financing to be provided by the
20 project applicant, including the amount and type of capital investment
21 to be provided;

22 (c) the purpose of the project;

23 (d) the amount, types, sources and commitments of any private financ-
24 ing;

25 (e) the projected number of new full-time and part-time positions
26 expected to be created over the period of financial assistance, and an
27 estimated schedule by year of when those positions will be created;

28 (f) the number and types of full-time and part-time jobs to be
29 retained, and the number of filled positions at the project as of the
30 date the agreement is executed;

31 (g) the types and value of other forms of financial assistance
32 provided to the project or requested by the project applicant from other
33 state or local government agencies or authorities; and

34 (h) the penalties to be imposed on the project applicant if the terms
35 of the agreement are not met.

36 2. The length of a financial assistance agreement shall be limited to
37 no more than five years; provided however that the agreement may be
38 renewed for up to five additional years if the agency determines that
39 the project applicant has acted in good faith to meet the terms and
40 conditions of the agreement. In no event may financial assistance in the
41 form of a loan or exemption from taxation be provided to a project for
42 more than ten years.

43 3. The financial assistance agreement shall be made available to the
44 public on the website of the agency.

45 4. The agency shall adopt a methodology to evaluate the conformance of
46 each assisted project to the terms and conditions of the financial
47 assistance agreement. This methodology shall be made available to the
48 public on the agency's website.

49 § 859-f. Recapture of certain financial assistance. 1. The agency,
50 pursuant to the terms and conditions of its financial assistance agree-
51 ment, may recapture financial assistance to a project from real property
52 tax exemptions, mortgage recording tax exemptions, or local sales or
53 compensating use tax exemptions if (a) the project violates state or
54 federal tax law, labor law, environmental protection law, or contract
55 law, or any state or federal rule or regulation implementing such law,
56 as determined by a court of competent jurisdiction or administrative

tribunal, provided that such court or tribunal concludes that the violation would cause material harm to the economy or quality of life of the community; or (b) all or part of the project's business activity or workforce is moved to a location outside the community served by the agency and by doing so violates the terms and conditions of its financial assistance agreement.

2. An agency which elects to initiate the recapture of financial assistance pursuant to subdivision one of this section must notify the recipient of such financial assistance in writing that it is in default of its financial assistance agreement and may direct the recipient of financial assistance to repay up to the full amount of such financial assistance received as of the date of the written notice plus interest at the rate set forth in section five thousand four of the civil practice law and rules.

3. Financial assistance recaptured pursuant to this section and any interest paid shall be redistributed to affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt. Unless otherwise agreed to in writing by an affected tax jurisdiction, the agency shall not retain any portion of such funds as an administrative or project fee.

§ 859-g. Wages and standards. Whenever a recipient of financial assistance from an agency enters into a contract, subcontract, lease or other agreement for or in connection with the construction, demolition, reconstruction, rehabilitation, repair, or renovation of an assisted project, the recipient of financial assistance shall pay workers engaged in such work no less than the prevailing rate of wage and supplements under article eight of the labor law.

§ 8. Subdivision 1 of section 862 of the general municipal law, as amended by section 1 of part J of chapter 59 of the laws of 2013, is amended to read as follows:

(1) (a) No ~~[funds]~~ financial assistance of the agency shall be used in respect ~~[of]~~ to any project if the ~~[completion thereof would result in]~~ project approval or provision of financial assistance contributes to the removal of ~~[an industrial or manufacturing plant of]~~ all or part of the project occupant from one area of the state to another area of the state or in the abandonment of one or more ~~[plants or]~~ facilities of the project occupant located within the state, or provides the project with a competitive advantage over existing like businesses in the same industry located in the same city, town, or village as such project, provided, however, that ~~[neither restriction]~~ such restrictions shall not apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

(b) For the purposes of this subdivision, "competitive advantage" shall include trade secrets that are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise. Other factors to be considered in determining whether a trade secret exists include:

(i) the extent to which the information is known outside the business;
(ii) the extent to which the information is known by a business' employees and others involved in the business;

1 (iii) the extent of measures taken by a business to guard the secrecy
2 of the information;

3 (iv) the value of the information to a business and to its compet-
4 itors;

5 (v) the amount of effort or money expended by a business in developing
6 the information; and,

7 (vi) the ease or difficulty with which the information could be prop-
8 erly acquired or duplicated by others. If there has been a voluntary
9 disclosure by the plaintiff, or if the facts pertaining to the matter
10 are a subject of general knowledge in the trade, then any property right
11 has evaporated.

12 § 9. Subdivision 4 of section 874 of the general municipal law, as
13 amended by chapter 357 of the laws of 1993 and paragraph (a) as amended
14 by chapter 386 of the laws of 2019, is amended to read as follows:

15 (4) (a) The agency shall [~~establish~~] adopt a uniform [~~tax-exemption~~]
16 financial assistance policy, [~~with input from~~] subject to the approval
17 of all affected tax jurisdictions, which shall be applicable to the
18 provision of financial assistance pursuant to section eight hundred
19 fifty-nine-a of this [~~chapter~~] title and shall provide guidelines for
20 the claiming of real property, mortgage recording, and sales tax
21 exemptions. Such guidelines shall include, but not be limited to: peri-
22 od of exemption; payments in lieu of taxes, as a percentage of
23 [~~exemption~~] taxes that would have been levied by or on behalf of
24 affected tax jurisdictions if the project was not tax exempt by reason
25 of agency involvement; types of projects for which exemptions can be
26 claimed; procedures for payments in lieu of taxes and instances in which
27 real property appraisals are to be performed as a part of an application
28 for tax exemption; in addition, agencies shall in adopting such policy
29 consider such issues as: the extent to which a project will create or
30 retain permanent, private sector jobs; the estimated value of any tax
31 exemptions to be provided; whether affected tax jurisdictions shall be
32 reimbursed by the project occupant if a project does not fulfill the
33 purposes for which an exemption was provided; the impact of a proposed
34 project on existing and proposed businesses and economic development
35 projects in the vicinity; the amount of private sector investment gener-
36 ated or likely to be generated by the proposed project; the demonstrated
37 public support for the proposed project; the likelihood of accomplishing
38 the proposed project in a timely fashion; the effect of the proposed
39 project upon the environment; the extent to which the project will
40 utilize, to the fullest extent practicable and economically feasible,
41 resource conservation, energy efficiency, green technologies, and alter-
42 native and renewable energy measures; the extent to which the proposed
43 project will require the provision of additional services, including,
44 but not limited to additional educational, transportation, police, emer-
45 gency medical or fire services; and the extent to which the proposed
46 project will provide additional sources of revenue for municipalities
47 and school districts. The adopted uniform financial assistance policy
48 shall be provided to the chief executive officer and the members of the
49 governing body of each affected tax jurisdiction and shall be made
50 available for public inspection at the agency's office and on the agen-
51 cy's website upon its adoption.

52 (b) The agency shall [~~establish a procedure~~] adopt criteria for devi-
53 ation from the uniform [~~tax-exemption~~] financial assistance policy
54 required pursuant to this subdivision, which shall be subject to the
55 approval of all affected local tax jurisdictions. The agency shall set
56 forth in writing the reasons for deviation from such policy, and shall

1 further notify the affected local taxing jurisdictions of the proposed
2 deviation from such policy and the reasons therefor not less than sixty
3 days before such deviation from the uniform tax exemption policy takes
4 effect.

5 § 10. Section 1953 of the public authorities law, as added by chapter
6 759 of the laws of 1967, the opening paragraph and subdivisions 9 and 13
7 as amended by chapter 907 of the laws of 1972 and subdivision 8 as
8 amended, subdivision 14 as added and subdivisions 15 and 16 as renum-
9 bered by chapter 356 of the laws of 1993, is amended to read as follows:

10 § 1953. Purpose and powers of the authority. The purposes of the
11 authority shall be to promote, develop, encourage and assist in the
12 acquiring, constructing, reconstructing, improving, maintaining, equip-
13 ping and furnishing industrial, manufacturing, warehouse, civic facili-
14 ties, and commercial research facilities including industrial pollution
15 control facilities, transportation facilities including but not limited
16 to those relating to water, highway, rail and air, in one or more areas
17 of the city, particularly but not exclusively at the site of what was
18 formerly the Troy airport including an airstrip or airport located in
19 the southern section of the city and thereby advance the job opportu-
20 nities, health, general prosperity and economic welfare of the people of
21 said city and to improve their standard of living; provided, however,
22 that the authority shall not undertake any project if the completion
23 thereof would result in the removal of an industrial or manufacturing
24 plant of the project occupant from one area of the state to another area
25 of the state or in the abandonment of one or more plants or facilities
26 of the project applicant located within the state, provided, however,
27 that neither restriction shall apply if the authority shall determine on
28 the basis of the application before it that the project is reasonably
29 necessary to discourage the project occupant from removing such other
30 plant or facility to a location outside the state or is reasonably
31 necessary to preserve the competitive position of the project occupant
32 in its respective industry. To carry out said purposes, the authority
33 shall have power:

- 34 1. To sue and be sued;
- 35 2. To have a seal and alter the same at pleasure;
- 36 3. To acquire, hold and dispose of personal property for its corporate
37 purpose;
- 38 4. To acquire by purchase, grant, lease, gift, condemnation, or other-
39 wise and to use, real property or rights or easements therein necessary
40 for its corporate purposes, and to sell, convey, mortgage, lease,
41 pledge, exchange or otherwise dispose of any such property in such
42 manner as the authority shall determine. With respect to real property
43 conveyed to it by the city, however, such power of disposition shall be
44 limited as hereinafter provided in section nineteen hundred [~~five~~]
45 fifty-five of this title;

46 5. To acquire real property within the city of Troy as necessary for
47 its corporate purposes pursuant to section eight hundred fifty-eight-c
48 of the general municipal law;

49 6. To make by-laws for the management and regulation of its affairs
50 and, subject to agreements with its bondholders, for the regulation of
51 the use of the project;

52 [~~6-~~] 7. With the consent of the city, to use agents, employees and
53 facilities of the city, paying the city its agreed proportion of the
54 compensation or costs;

55 [~~7-~~] 8. To appoint officers, agents and employees, to prescribe their
56 qualifications and to fix their compensation and to pay the same out of

1 funds of the authority, subject, however, to the provisions of the civil
2 service law as hereinafter provided in section nineteen hundred [~~and~~
3 ~~four~~] fifty-four of this title;

4 [~~8-~~] 9. To appoint an attorney, who may be the corporation counsel of
5 the city, and to fix the attorney's compensation for services which
6 shall be payable to the attorney, and to retain and employ private
7 consultants for professional and technical assistance and advice;
8 provided that an attorney acting as bond counsel for a project must file
9 with the authority a written statement in which the attorney identifies
10 each party to the transaction which such attorney represents. If bond
11 counsel provides any legal services to parties other than the authority,
12 the written statement must describe the nature of legal services
13 provided by such bond counsel to all parties to the transaction, includ-
14 ing the nature of the services provided to the authority;

15 [~~9-~~] 10. To make contracts and leases upon such terms as the authority
16 shall deem appropriate, including without limitation leases which grant
17 the tenant of a project an option to renew or an option to purchase the
18 project, or both, at a fixed or otherwise predetermined price and to
19 execute all instruments necessary or convenient;

20 [~~10-~~] 11. To acquire, construct, reconstruct, lease, improve, main-
21 tain, equip or furnish one or more projects;

22 [~~11-~~] 12. To accept gifts, grants, loans or contributions from, and
23 enter into contracts or other transactions with, the United States and
24 the state or any agency of either of them, any municipality, any public
25 or private corporation or any other legal entity, and to use any such
26 gifts, grants, loans or contributions for any of its corporate purposes;

27 [~~12-~~] 13. To provide financial assistance in the form of loans to
28 improve, maintain or equip one or more projects consistent with its
29 corporate purposes;

30 14. To provide financial assistance in the form of grants to one or
31 more projects consistent with its corporate purposes;

32 15. To borrow money and to issue bonds and to provide for the rights
33 of the holders thereof;

34 [~~13-~~] 16. To designate the depositories of its money either within or
35 without the state of New York;

36 [~~14-~~] 17. To enter into agreements requiring payments in lieu of
37 taxes. Such agreements shall be in writing and in addition to other
38 terms shall contain: the amount due annually to each affected tax juris-
39 diction (or a formula by which the amount due can be calculated), the
40 name and address of the person, office or agency to which payment shall
41 be delivered, the date on which payment shall be made, and the date on
42 which payment shall be considered delinquent if not paid. Unless other-
43 wise agreed by the affected tax jurisdictions, any such agreement shall
44 provide that payments in lieu of taxes shall be allocated among affected
45 tax jurisdictions in proportion to the amount of real property tax and
46 other taxes which would have been received by each affected tax juris-
47 diction had the project not been tax exempt due to the status of the
48 authority involved in the project. A copy of any such agreement shall be
49 delivered to each affected tax jurisdiction within fifteen days of sign-
50 ing the agreement. In the absence of any such written agreement,
51 payments in lieu of taxes made by an agency shall be allocated in the
52 same proportions as they had been prior to January first, nineteen
53 hundred ninety-three for so long as the authority's activities render a
54 project non-taxable by affected tax jurisdictions.

55 [~~15-~~] 18. To establish and reestablish its fiscal year; and

1 ~~[16-]~~ 19. To do all things necessary or convenient to carry out its
2 purposes and exercise the powers expressly given in this title.

3 § 11. Section 1953-a of the public authorities law, as added by chap-
4 ter 356 of the laws of 1993, subdivision 1 as amended by chapter 357 of
5 the laws of 1993, is amended to read as follows:

6 § 1953-a. Additional prerequisites to the provision of financial
7 assistance. Prior to providing any financial assistance ~~[of]~~ totaling
8 more than one hundred thousand dollars to any project, the authority
9 must comply with the following prerequisites:

10 1. The authority must adopt a resolution describing the project and
11 type and amount of the financial assistance that the authority is
12 contemplating with respect to such project. Such assistance shall be
13 consistent with the uniform ~~[tax exemption]~~ financial assistance policy
14 adopted by the agency pursuant to subdivision one of section nineteen
15 hundred sixty-three-a of this ~~[chapter]~~ title, unless the agency has
16 followed procedures for deviation from such policy specified in subdivi-
17 sion two of such section.

18 2. The authority must hold a public hearing with respect to the
19 project and the proposed financial assistance being contemplated by the
20 authority not less than thirty days prior to executing a written agree-
21 ment to provide financial assistance. At said public hearing, inter-
22 ested parties shall be provided reasonable opportunity, both orally and
23 in writing, to present their views with respect to the project and the
24 type and amount of financial assistance to be provided. The authority
25 shall also accept written comments up to seven days after such hearing
26 is held.

27 3. The authority must give at least ten days published notice of said
28 public hearing and shall, at the same time, provide notice of such hear-
29 ing to the chief executive officer of the affected tax jurisdiction
30 within which the project is located. The notice of hearing must state
31 the time and place of the hearing, contain a general, functional
32 description of the project, describe the prospective location of the
33 project, identify the initial owner, operator or manager of the project
34 and generally describe the financial assistance contemplated by the
35 authority with respect to the project.

36 4. The authority shall maintain a complete record of the hearing,
37 including all documents and oral statements, and written statements
38 presented at or within seven days following such hearing. All members
39 shall be provided with a copy of such record at least seven days before
40 voting whether to approve financial assistance for the project. Such
41 record shall also be posted on the authority website at the time it is
42 provided to members.

43 § 12. The public authorities law is amended by adding four new
44 sections 1953-b, 1953-c, 1953-d and 1953-e to read as follows:

45 § 1953-b. Project application and approval criteria. 1. The project
46 applicant shall submit an application, developed by the authority, for
47 approval of a proposed project and financial assistance. The authority
48 shall adopt project application review and approval criteria that shall
49 be applied to all project applications under consideration for approval
50 and financial assistance. The decision to approve or not approve finan-
51 cial assistance shall be based on, but not limited to, consideration of
52 the following criteria:

53 (a) Strategic objectives. Consideration is to be given to the purpose
54 of the project, such as the nature of the planned business activity, the
55 extent to which the planned business activity is unrepresented or under-

1 represented in the community, and whether the project involves a busi-
2 ness interested in relocating from outside the state of New York.

3 (b) Job creation. A decision to fund a project shall be based on the
4 number of jobs to be created or retained by the proposed project, the
5 range of projected salaries and benefits associated with jobs to be
6 created, and the benchmarks and timeframes to be used by the project to
7 determine whether it is meeting projected job creation and retention
8 goals.

9 (c) The financial viability of the project. Approval for funding shall
10 consider the extent to which the viability and success of the project is
11 dependent on financial assistance from the authority. The authority
12 shall also consider the amount and type of financial assistance being
13 requested, the amount and type of private financing required, the amount
14 and type of capital investment to be provided by the project applicant,
15 and any prior financial assistance provided to the project or to the
16 project applicant.

17 (d) Economic benefits. Funding decisions shall consider the potential
18 economic and financial impact of the project on existing businesses in
19 the area, on the affected tax jurisdictions, and on the local labor
20 market.

21 (e) Legal issues. Consideration shall be given to the project appli-
22 cant's record of compliance with applicable laws and regulations.

23 2. The project application review and approval criteria shall be
24 reviewed and approved annually at a regular meeting of the authority and
25 made available to the public on the authority's website.

26 3. The authority shall provide the director of the authorities budget
27 office with an electronic copy of the application and project review and
28 approval criteria within thirty days of their adoption or revision.

29 4. The authority shall retain a written record of the evaluation of
30 each project application to document its decision to provide or deny
31 financial assistance.

32 § 1953-c. Financial assistance agreement. 1. The authority shall enter
33 into a written agreement with the project applicant prior to providing
34 financial assistance. The agreement shall include the following informa-
35 tion:

36 (a) a description of the amount and type of financial assistance to be
37 provided by the authority, including a description and the value of
38 property conveyed at less than fair market value;

39 (b) a description of the amount of financing to be provided by the
40 project applicant, including the amount and type of capital investment
41 to be provided;

42 (c) the purpose of the project;

43 (d) the amount, types, sources and commitments of any private financ-
44 ing;

45 (e) the projected number of new full-time and part-time positions
46 expected to be created over the period of financial assistance, and an
47 estimated schedule by year of when those positions will be created;

48 (f) the number and types of full-time and part-time jobs to be
49 retained, and the number of filled positions at the project as of the
50 date the agreement is executed;

51 (g) the types and value of other forms of financial assistance
52 provided to the project or requested by the project applicant from other
53 state or local government agencies or authorities; and

54 (h) the penalties to be imposed on the project applicant if the terms
55 of the agreement are not met.

2. The length of a financial assistance agreement shall be limited to no more than five years; provided however that the agreement may be renewed for up to five additional years if the authority determines that the project applicant has acted in good faith to meet the terms and conditions of the agreement. In no event may financial assistance in the form of a loan or exemption from taxation be provided to a project for more than ten years.

3. The financial assistance agreement shall be made available to the public on the website of the authority.

4. The authority shall adopt a methodology to evaluate the conformance of each assisted project to the terms and conditions of the financial assistance agreement. This methodology shall be made available to the public on the authority's website.

§ 1953-d. Recapture of certain financial assistance. 1. The authority, pursuant to the terms and conditions of its financial assistance agreement, may recapture financial assistance to a project from the proceeds of bonds issued by the authority, mortgage recording tax exemptions, or local sales or compensating use tax exemptions if (a) the project violates state or federal tax law, labor law, environmental protection law, or contract law, or any state or federal rule or regulation implementing such law, as determined by a court of competent jurisdiction or administrative tribunal, provided that such court or tribunal concludes that the violation would cause material harm to the economy or quality of life of the community; or (b) all or part of the project's business activity or workforce is moved to a location outside the community served by the authority and by doing so violates the terms and conditions of its financial assistance agreement.

2. An authority which elects to initiate the recapture of financial assistance pursuant to subdivision one of section eight hundred fifty-nine-f of the general municipal law must notify the recipient of such financial assistance in writing that it is in default of its financial assistance agreement and may direct the recipient of financial assistance to repay up to the full amount of such financial assistance received as of the date of the written notice plus interest at the rate set forth in section five thousand four of the civil practice law and rules.

3. Financial assistance recaptured pursuant to this section and any interest paid shall be redistributed to affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt. Unless otherwise agreed to in writing by an affected tax jurisdiction, the authority shall not retain any portion of such funds as an administrative or project fee.

§ 1953-e. Wages and standards. Whenever a recipient of financial assistance from the authority enters into a contract, subcontract, lease or other agreement for or in connection with the construction, demolition, reconstruction, rehabilitation, repair, or renovation of an assisted project, the recipient of financial assistance shall pay workers engaged in such work no less than the prevailing rate of wage and supplements under article eight of the labor law.

§ 13. Section 1963-a of the public authorities law, as amended by chapter 357 of the laws of 1993 and subdivision 1 as amended by chapter 386 of the laws of 2019, is amended to read as follows:

§ 1963-a. Uniform ~~[tax-exemption]~~ financial assistance policy. 1. The authority shall ~~[establish]~~ adopt a uniform ~~[tax-exemption]~~ financial assistance policy, ~~[with input from]~~ subject to the approval of affected

1 local taxing jurisdictions, which shall be applicable to provisions of
2 financial assistance pursuant to section nineteen hundred fifty-three-a
3 of this title and shall provide guidelines for the claiming of real
4 property, mortgage recording, and sales tax exemptions. Such guidelines
5 shall include, but not be limited to: period of exemption; payments in
6 lieu of taxes as a percentage of ~~[exemption]~~ taxes that would have been
7 levied by or on behalf of affected tax jurisdictions if the project was
8 not exempt by reason of authority involvement; types of projects for
9 which exemptions can be claimed; procedures for payments in lieu of
10 taxes and instances in which real property appraisals are to be
11 performed as a part of an application for tax exemption; in addition,
12 the authority in adopting such policy shall consider such issues as: the
13 extent to which a project will create or retain permanent, private
14 sector jobs; the estimated value of any tax exemption to be provided;
15 whether affected tax jurisdictions should be reimbursed by the project
16 occupant if a project does not fulfill the purposes for which an
17 exemption was provided; the impact of a proposed project on existing and
18 proposed businesses and economic development projects in the vicinity;
19 the amount of private sector investment generated or likely to be gener-
20 ated by the proposed project; the demonstrated public support for the
21 proposed project; the likelihood of accomplishing the proposed project
22 in a timely fashion; the effect of the proposed project upon the envi-
23 ronment; the extent to which the project will utilize, to the fullest
24 extent practicable and economically feasible, resource conservation,
25 energy efficiency, green technologies, and alternative and renewable
26 energy measures; the extent to which the proposed project will require
27 the provision of additional services, including, but not limited to
28 additional educational, transportation, police, emergency medical or
29 fire services; and the extent to which the proposed project will provide
30 additional sources ~~[of]~~ of revenue for municipalities and school
31 districts. The adopted uniform financial assistance policy shall be
32 provided to the chief executive officer and members of the governing
33 body of each affected tax jurisdiction and shall be made available for
34 public inspection at the authority's office and on the authority's
35 website upon its adoption.

36 2. The authority shall ~~[establish a procedure]~~ adopt criteria for
37 deviation from the uniform ~~[tax exemption]~~ financial assistance policy
38 required pursuant to this section which shall be subject to the approval
39 of affected local tax jurisdictions. The authority shall set forth in
40 writing the reasons for deviation from such policy, and shall further
41 notify the affected tax jurisdictions of the proposed deviation from
42 such policy and the reasons therefor not less than sixty days before
43 such deviation from the uniform tax exemption policy takes effect.

44 § 14. Section 2306 of the public authorities law, as added by chapter
45 915 of the laws of 1969, the opening paragraph and an undesignated para-
46 graph as amended by chapter 304 of the laws of 2013, subdivision 9 as
47 amended by chapter 556 of the laws of 1973 and subdivision 8 as amended,
48 subdivision 14 as added and subdivisions 15 and 16 as renumbered by
49 chapter 356 of the laws of 1993, is amended to read as follows:

50 § 2306. Purpose and powers of the authority. The purposes of the
51 authority shall be to promote, develop, encourage and assist in the
52 acquiring, constructing, reconstructing, improving, maintaining, equip-
53 ping and furnishing industrial, manufacturing, warehouse, civic facili-
54 ties, commercial and research facilities and facilities for use by a
55 federal agency or a medical facility including industrial pollution
56 control facilities, which may include transportation facilities includ-

ing but not limited to those relating to water, highway, rail and air, in one or more areas of the city, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of said city and to improve their medical care and standard of living; provided, however, that the authority shall not undertake any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in abandonment of one or more plants or facilities of the project applicant located within the state, provided, however, that neither restriction shall apply if the authority shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry. Except as otherwise provided for in this section, no financial assistance of the authority shall be provided in respect of any project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost. For the purposes of this article, "retail sales" shall mean: (i) sales by a registered vendor under article twenty-eight of the tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers. Except, however, that tourism destination projects shall not be prohibited by this paragraph. For the purpose of this paragraph, "tourism destination" shall mean a location or facility which is likely to attract a significant number of visitors from outside the economic development region as established by section two hundred thirty of the economic development law, in which the project is located.

Notwithstanding the provisions of this section to the contrary, such financial assistance may, however, be provided to a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost, where: (i) the predominant purpose of the project would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the city of Auburn because of a lack of reasonably accessible retail trade facilities offering such goods or services; or (ii) the project is located in a highly distressed area. With respect to projects authorized pursuant to this paragraph no project shall be approved unless the authority shall find after the public hearing required by section twenty-three hundred seven of this title that undertaking the project will serve the public purposes of this article by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state. Where the authority makes such a finding, prior to providing financial assistance to the project by the authority, the chief executive officer of the city of Auburn shall confirm the proposed action of the authority. To carry out said purpose, the authority shall have power:

1. To sue and be sued;
2. To have a seal and alter the same at pleasure;
3. To acquire, hold and dispose of personal property for its corporate purpose;

4. To acquire by purchase, grant, lease, gift, condemnation, or otherwise and to use, real property or rights or easements therein necessary for its corporate purposes, and to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of any such property in such manner as the authority shall determine. With respect to real property conveyed to it by the city, however, such power of disposition shall be limited as hereinafter provided in section twenty-three hundred ten of this title;

5. To acquire real property within the city of Auburn as necessary for its corporate purposes pursuant to section eight hundred fifty-eight-c of the general municipal law;

6. To make by-laws for the management and regulation of its affairs and, subject to agreements with its bondholders, for the regulation of the use of the project[-];

~~6.~~ 7. With the consent of the city, to use agents, employees and facilities of the city, paying the city its agreed proportion of the compensation or costs[-];

~~7.~~ 8. To appoint officers, agents and employees, to prescribe their qualifications and to fix their compensation and to pay the same out of funds of the authority, subject, however, to the provisions of the civil service law hereinafter provided in section twenty-three hundred eight of this title;

~~8.~~ 9. To retain and employ financial advisors, engineers, architects, attorneys and other consultants for professional and technical assistance and advice; that an attorney acting as bond counsel for a project must file with the authority a written statement in which the attorney identifies each party to the transaction which such attorney represents. If bond counsel provides any legal services to the parties other than the authority, the written statement must describe the nature of legal services provided by such bond counsel to all parties to the transaction, including the nature of the services provided to the authority;

~~9.~~ 10. To make contracts and leases upon such terms as the authority shall deem appropriate, including without limitation leases which grant the tenant of a project an option to renew or an option to purchase the project, or both, at a fixed or otherwise predetermined price, and to execute all instruments necessary or convenient;

~~10.~~ 11. To acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects;

~~11.~~ 12. To accept gifts, grants, loans or contributions from, and enter into contracts or other transactions with, the United States and the state or any agency of either of them, any municipality, any public or private corporation or any other legal entity, and to use any such gifts, grants, loans or contributions for any of its corporate purposes;

~~12.~~ 13. To provide financial assistance in the form of loans to improve, maintain or equip one or more projects consistent with its corporate purposes;

14. To provide financial assistance in the form of grants for one or more projects consistent with its corporate purposes;

15. To borrow money and to issue bonds and to provide for the rights of the holders thereof;

~~13.~~ 16. To designate the depositories of its money in the city of Auburn[-];

~~14.~~ 17. To enter into agreements requiring payments in lieu of taxes. Such agreements shall be in writing and in addition to other terms shall contain: the amount due annually to each affected tax juris-

diction (or a formula by which the amount due can be calculated), the name and address of the person, office or agency to which payment shall be delivered, the date on which the payment shall be made, and the date on which payment shall be considered delinquent if not paid. Unless otherwise agreed by the affected tax jurisdictions, any such agreement shall provide that payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt due to the status of the agency involved in the project. A copy of any such agreement shall be delivered to each tax affected jurisdiction within fifteen days of signing the agreement. In the absence of any such written agreement, payments in lieu of taxes shall be allocated in the same proportions as they had been prior to January first, nineteen hundred ninety-three for so long as the authority's activities render a project non-taxable by affected tax jurisdictions[+];

[15+] 18. To establish and reestablish its fiscal year; and
[16+] 19. To do all things necessary or convenient to carry out its purposes and exercise the powers expressly given in this title.

§ 15. Section 2307 of the public authorities law, as added by chapter 356 of the laws of 1993, and subdivision 1 as amended by chapter 357 of the laws of 1993, is amended to read as follows:

§ 2307. Additional prerequisites to the provision of financial assistance. Prior to providing any financial assistance [of] totaling more than one hundred thousand dollars to any project, the authority must comply with the following prerequisites:

1. The authority must adopt a resolution describing the project and type and amount of the financial assistance that the authority is contemplating with respect to such project. Such assistance shall be consistent with the uniform ~~[tax exemption]~~ financial assistance policy adopted by the agency pursuant to subdivision one of section twenty-three hundred fifteen of this chapter, unless the agency has followed procedures for deviation from such policy specified in subdivision two of such section.

2. The authority must hold a public hearing with respect to the project and the proposed financial assistance being contemplated by the authority not less than thirty days prior to executing a written agreement to provide financial assistance. At said public hearing, interested parties shall be provided reasonable opportunity, both orally and in writing, to present their views with respect to the project and the type and amount of financial assistance to be provided. The authority shall also accept written comments up to seven days after such hearing is held.

3. The authority must give at least ten days published notice of said public hearing and shall, at the same time, provide notice of such hearing to the chief executive officer of each affected tax ~~[jurisdiction]~~ jurisdiction within which the project is located. The notice of hearing must state the time and place of the hearing, contain a general, functional description of the project, describe the prospective location of the project, identify the initial owner, operator or manager of the project and generally describe the financial assistance contemplated by the authority with respect to the project.

4. The authority shall maintain a complete record of the hearing, including all documents and oral statements, and written statements presented at or within seven days following such hearing. All members shall be provided with a copy of such record at least seven days before

1 deciding whether to approve financial assistance for the project. Such
2 record shall also be posted on the authority's website at the time it is
3 provided to members.

4 § 16. The public authorities law is amended by adding four new
5 sections 2307-a, 2307-b, 2307-c and 2307-d to read as follows:

6 § 2307-a. Project application and approval criteria. 1. The project
7 applicant shall submit an application, developed by the authority, for
8 approval of a proposed project and financial assistance. The authority
9 shall adopt project application review and approval criteria that shall
10 be applied to all project applications under consideration for approval
11 and financial assistance. The decision to approve or not approve finan-
12 cial assistance shall be based on, but not limited to, consideration of
13 the following criteria:

14 (a) Strategic objectives. Consideration is to be given to the purpose
15 of the project, such as the nature of the planned business activity, the
16 extent to which the planned business activity is unrepresented or under-
17 represented in the community, and whether the project involves a busi-
18 ness interested in relocating from outside the state of New York.

19 (b) Job creation. A decision to fund a project shall be based on the
20 number of jobs to be created or retained by the proposed project, the
21 range of projected salaries and benefits associated with jobs to be
22 created, and the benchmarks and timeframes to be used by the project to
23 determine whether it is meeting projected job creation and retention
24 goals.

25 (c) The financial viability of the project. Approval for funding shall
26 consider the extent to which the viability and success of the project is
27 dependent on financial assistance from the authority. The authority
28 shall also consider the amount and type of financial assistance being
29 requested, the amount and type of private financing required, the amount
30 and type of capital investment to be provided by the project applicant,
31 and any prior financial assistance provided to the project or to the
32 project applicant.

33 (d) Economic benefits. Funding decisions shall consider the potential
34 economic and financial impact of the project on existing businesses in
35 the area, on the affected tax jurisdictions, and on the local labor
36 market.

37 (e) Legal issues. Consideration shall be given to the project appli-
38 cant's record of compliance with applicable laws and regulations.

39 2. The project application review and approval criteria shall be
40 reviewed and approved annually at a regular meeting of the authority and
41 made available to the public on the authority's website.

42 3. The authority shall provide the director of the authorities budget
43 office with an electronic copy of the application and project review and
44 approval criteria within thirty days of their adoption or revision.

45 4. The authority shall retain a written record of the evaluation of
46 each project application to document its decision to provide or deny
47 financial assistance.

48 § 2307-b. Financial assistance agreement. 1. The authority shall enter
49 into a written agreement with the project applicant prior to providing
50 financial assistance. The agreement shall include the following informa-
51 tion:

52 (a) a description of the amount and type of financial assistance to be
53 provided by the authority, including a description and the value of
54 property conveyed at less than fair market value;

1 (b) a description of the amount of financing to be provided by the
2 project applicant, including the amount and type of capital investment
3 to be provided;

4 (c) the purpose of the project;

5 (d) the amount, types, sources and commitments of any private financ-
6 ing;

7 (e) the projected number of new full-time and part-time positions
8 expected to be created over the period of financial assistance, and an
9 estimated schedule by year of when those positions will be created;

10 (f) the number and types of full-time and part-time jobs to be
11 retained, and the number of filled positions at the project as of the
12 date the agreement is executed;

13 (g) the types and value of other forms of financial assistance
14 provided to the project or requested by the project applicant from other
15 state or local government agencies or authorities; and

16 (h) the penalties to be imposed on the project applicant if the terms
17 of the agreement are not met.

18 2. The length of a financial assistance agreement shall be limited to
19 no more than five years; provided however that the agreement may be
20 renewed for up to five additional years if the authority determines that
21 the project applicant has acted in good faith to meet the terms and
22 conditions of the agreement. In no event may financial assistance in the
23 form of a loan or exemption from taxation be provided to a project for
24 more than ten years.

25 3. The financial assistance agreement shall be made available to the
26 public on the website of the authority.

27 4. The authority shall adopt a methodology to evaluate the conformance
28 of each assisted project to the terms and conditions of the financial
29 assistance agreement. This methodology shall be made available to the
30 public on the authority's website.

31 § 2307-c. Recapture of certain financial assistance. 1. The authority,
32 pursuant to the terms and conditions of its financial assistance agree-
33 ment, may recapture financial assistance to a project from the proceeds
34 of bonds issued by the authority, mortgage recording tax exemptions, or
35 local sales or compensating use tax exemptions if (a) the project
36 violates state or federal tax law, labor law, environmental protection
37 law, or contract law, or any state or federal rule or regulation imple-
38 menting such law, as determined by a court of competent jurisdiction or
39 administrative tribunal, provided that such court or tribunal concludes
40 that the violation would cause material harm to the economy or quality
41 of life of the community; or (b) all or part of the project's business
42 activity or workforce is moved to a location outside the community
43 served by the authority and by doing so violates the terms and condi-
44 tions of its financial assistance agreement.

45 2. An authority which elects to initiate the recapture of financial
46 assistance pursuant to subdivision one of section eight hundred fifty-
47 nine-e of the general municipal law must notify the recipient of such
48 financial assistance in writing that it is in default of its financial
49 assistance agreement and may direct the recipient of financial assist-
50 ance to repay up to the full amount of such financial assistance
51 received as of the date of the written notice plus interest at the rate
52 set forth in section five thousand four of the civil practice law and
53 rules.

54 3. Financial assistance recaptured pursuant to this section and any
55 interest paid shall be redistributed to affected tax jurisdictions in
56 proportion to the amount of real property tax and other taxes which

1 would have been received by each affected tax jurisdiction had the
2 project not been tax exempt. Unless otherwise agreed to in writing by an
3 affected tax jurisdiction, the authority shall not retain any portion of
4 such funds as an administrative or project fee.

5 § 2307-d. Wages and standards. Whenever a recipient of financial
6 assistance from the authority enters into a contract, subcontract, lease
7 or other agreement for or in connection with the construction, demoli-
8 tion, reconstruction, rehabilitation, repair, or renovation of an
9 assisted project, the recipient of financial assistance shall pay work-
10 ers engaged in such work no less than the prevailing rate of wage and
11 supplements under article eight of the labor law.

12 § 17. Section 2315 of the public authorities law, as amended by chap-
13 ter 357 of the laws of 1993, subdivision 1 as amended by chapter 386 of
14 the laws of 2019, is amended to read as follows:

15 § 2315. Uniform ~~[tax-exemption]~~ financial assistance policy. 1. The
16 authority shall ~~[establish]~~ adopt a uniform ~~[tax-exemption]~~ financial
17 assistance policy, ~~[with input from]~~ subject to the approval of affected
18 local taxing jurisdictions, which shall be applicable to provisions of
19 financial assistance pursuant to section twenty-three hundred seven of
20 this title and shall provide guidelines for the claiming of real proper-
21 ty, mortgage recording, and sales tax exemptions. Such guidelines shall
22 include, but not be limited to: period of exemption; payments in lieu of
23 taxes as a percentage of ~~[exemption]~~ taxes that would have been levied
24 by or on behalf of affected tax jurisdictions if the project was not
25 exempt by reason of authority involvement; types of projects for which
26 exemptions may be claimed; procedures for payments in lieu of taxes and
27 instances in which real property appraisals are to be performed as a
28 part of an application for tax exemption; in addition, the authority in
29 adopting such policy shall consider such issues as: the extent to which
30 a project will create or retain permanent, private sector jobs; the
31 estimated value of any tax exemption to be provided; whether affected
32 tax jurisdictions should be reimbursed by the project occupant if a
33 project does not fulfill the purposes for which an exemption was
34 provided; the impact of a proposed project on existing and proposed
35 businesses and economic development projects in the vicinity; the amount
36 of private sector investment generated or likely to be generated by the
37 proposed project; the demonstrated public support for the proposed
38 project; the likelihood of accomplishing the proposed project in a time-
39 ly fashion; the effect of the proposed project upon the environment; the
40 extent to which the project will utilize, to the fullest extent practi-
41 cable and economically feasible, resource conservation, energy efficien-
42 cy, green technologies, and alternative and renewable energy measures;
43 the extent to which the proposed project will require the provision of
44 additional services, including, but not limited to additional educa-
45 tional, transportation, police, emergency medical or fire services; and
46 the extent to which the proposed project will provide additional sources
47 of revenue for municipalities and school districts. The adopted uniform
48 financial assistance policy shall be provided to the chief executive
49 officer and members of the governing body of each affected tax jurisdic-
50 tion and shall be made available for public inspection at the authori-
51 ty's office and on the authority's website upon its adoption.

52 2. The authority shall ~~[establish a procedure]~~ adopt criteria for
53 deviation from the uniform ~~[tax-exemption]~~ financial assistance policy
54 required pursuant to this section which shall be subject to the approval
55 of affected local tax jurisdictions. The authority shall set forth in
56 writing the reasons for deviation from such policy, and shall further

1 notify the affected local taxing jurisdictions of the proposed deviation
2 from such policy and the reasons therefor not less than sixty days
3 before such deviation from the uniform tax exemption policy shall take
4 effect.

5 § 18. Subdivision 1 of section 2976 of the public authorities law, as
6 amended by section 1 of part C of chapter 19 of the laws of 2010, is
7 amended to read as follows:

8 1. Notwithstanding any other law to the contrary, public benefit
9 corporations (which for purposes of this section shall include indus-
10 trial development agencies created pursuant to title one of article
11 eighteen-A of the general municipal law or any other provision of law
12 and the New York city housing development corporation created pursuant
13 to article twelve of the private housing finance law) which issue bonds,
14 notes or other obligations and not-for-profit corporations that issue
15 bonds on behalf of the state or a political subdivision thereof shall
16 pay to the state a bond issuance charge upon the issuance of such bonds
17 in an amount determined pursuant to subdivision two of this section.
18 Such charge shall be paid to the state department of taxation and
19 finance, upon forms prescribed therefor, no later than fifteen days from
20 the end of the month within which such bonds are issued.

21 § 19. The not-for-profit corporation law is amended by adding a new
22 section 206 to read as follows:

23 § 206. Financial assistance agreement.

24 1. A corporation, including a local development corporation, deter-
25 mined to be a local authority pursuant to subdivision two of section two
26 and paragraph (j) of subdivision one of section six of the public
27 authorities law that provides financial assistance to a project in the
28 form of a grant, loan, exemption from taxation, or contribution for the
29 public purpose of relieving or reducing unemployment, promoting and
30 marketing job opportunities, or supporting the formation, relocation,
31 expansion, or retention of business shall enter into a written agreement
32 with the project applicant prior to providing financial assistance.

33 2. The agreement shall include the following information:

34 (a) a description of the amount and type of financial assistance to be
35 provided by the corporation, including a description and the value of
36 property conveyed at less than fair market value;

37 (b) a description of the amount of financing to be provided by the
38 project applicant, including the amount and type of capital investment
39 to be provided;

40 (c) the purpose of the project;

41 (d) the amount, types, sources and commitments of any private financ-
42 ing;

43 (e) the projected number of new full-time and part-time positions
44 expected to be created over the period of financial assistance, and an
45 estimated schedule by year of when those positions will be created;

46 (f) the number and types of full-time and part-time jobs to be
47 retained, and the number of filled positions at the project as of the
48 date the agreement is executed;

49 (g) the types and value of other forms of financial assistance
50 provided to the project or requested by the project applicant from other
51 state or local government agencies or authorities; and

52 (h) the penalties to be imposed on the project applicant if the terms
53 of the agreement are not met.

54 3. The length of a financial assistance agreement shall be limited to
55 no more than five years; provided however that the agreement may be
56 renewed for up to five additional years if the corporation determines

1 that the project applicant has acted in good faith to meet the terms and
2 conditions of the agreement. In no event may financial assistance in the
3 form of a loan or exemption from taxation be provided to a project for
4 more than ten years.

5 4. The financial assistance agreement shall be made available to the
6 public on the website of the corporation.

7 5. The corporation shall adopt a methodology to evaluate the conform-
8 ance of each assisted project to the terms and conditions of the finan-
9 cial assistance agreement. This methodology shall be made available to
10 the public on the corporation's website.

11 6. (a) The corporation, pursuant to the terms and conditions of its
12 financial assistance agreement, may recapture financial assistance to a
13 project from grants, loans, real property tax exemptions, mortgage
14 recording tax exemptions, or local sales or compensating use tax
15 exemptions if (i) the project violates state or federal tax law, labor
16 law, environmental protection law, or contract law, or any state or
17 federal rule or regulation implementing such law, as determined by a
18 court of competent jurisdiction or administrative tribunal, provided
19 that such court or tribunal concludes that the violation would cause
20 material harm to the economy or quality of life of the community; or
21 (ii) all or part of the project's business activity or workforce is
22 moved to a location outside the community served by the corporation and
23 by doing so violates the terms and conditions of its financial assist-
24 ance agreement.

25 (b) A corporation which elects to initiate the recapture of financial
26 assistance pursuant to subdivision one of this section must notify the
27 recipient of such financial assistance in writing that it is in default
28 of its financial assistance agreement and may direct the recipient of
29 financial assistance to repay up to the full amount of such financial
30 assistance received as of the date of the written notice plus interest
31 at the rate set forth in section five thousand four of the civil prac-
32 tice law and rules.

33 (c) Financial assistance recaptured pursuant to this section and any
34 interest paid shall be redistributed to affected tax jurisdictions in
35 proportion to the amount of real property tax and other taxes which
36 would have been received by each affected tax jurisdiction had the
37 project not been tax exempt. Unless otherwise agreed to in writing by an
38 affected tax jurisdiction, the corporation shall not retain any portion
39 of such funds as an administrative or project fee.

40 7. Wages and standards. Whenever a recipient of financial assistance
41 from the corporation enters into a contract, subcontract, lease or other
42 agreement for or in connection with the construction, demolition, recon-
43 struction, rehabilitation, repair, or renovation of an assisted project,
44 the recipient of financial assistance shall pay workers engaged in such
45 work no less than the prevailing rate of wage and supplements under
46 article eight of the labor law.

47 8. For the purposes of this section, "project" shall mean any land,
48 any building or other improvement, and all real and personal properties
49 located within the state of New York and within or outside or partially
50 within and partially outside the municipality for whose benefit the
51 agency was created, including, but not limited to, machinery, equipment
52 and other facilities deemed necessary or desirable in connection there-
53 with, or incidental thereto, whether or not now in existence or under
54 construction, which shall be suitable for manufacturing, warehousing,
55 research, commercial or industrial purposes or other economically sound
56 purposes identified and called for to implement a state designated urban

1 cultural park management plan as provided in title G of the parks,
2 recreation and historic preservation law and which may include or mean
3 an industrial pollution control facility, a recreation facility, educa-
4 tional or cultural facility, a horse racing facility, a railroad facili-
5 ty or an automobile racing facility, provided, however, that no agency
6 shall use its funds or provide financial assistance in respect of any
7 project wholly or partially outside the municipality for whose benefit
8 the agency was created without the prior consent thereto by the govern-
9 ing body or bodies of all the other municipalities in which a part or
10 parts of the project is, or is to be, located, and such portion of the
11 project located outside such municipality for whose benefit the agency
12 was created shall be contiguous with the portion of the project inside
13 such municipality.

14 § 20. Paragraphs (a), (b) and (d) of section 1411 of the not-for-pro-
15 fit corporation law, paragraph (a) as amended by chapter 847 of the laws
16 of 1970 and paragraph (b) as amended by chapter 549 of the laws of 2013,
17 are amended to read as follows:

18 (a) Purposes.

19 This section shall provide an additional and alternate method of
20 incorporation or reincorporation of not-for-profit corporations for any
21 of the purposes set forth in this paragraph [~~and shall not be deemed to~~
22 ~~alter, impair or diminish the purposes, rights, powers or privileges of~~
23 ~~any corporation heretofore or hereafter incorporated under this section~~
24 ~~or under the stock or business corporation laws~~]. Corporations may be
25 incorporated or reincorporated under this section as not-for-profit
26 local development corporations operated for the exclusively charitable
27 or public purposes of relieving and reducing unemployment, promoting and
28 providing for additional and maximum employment, bettering and maintain-
29 ing job opportunities, instructing or training individuals to improve or
30 develop their capabilities for such jobs, carrying on scientific
31 research for the purpose of aiding a community or geographical area by
32 attracting new industry to the community or area or by encouraging the
33 development of, or retention of, an industry in the community or area[
34 ~~and lessening the burdens of government and acting in the public inter-~~
35 ~~est, and any~~]. Any one or more counties, cities, towns or villages of
36 the state, or any combination thereof, or the New York job development
37 authority in exercising its power under the public authorities law to
38 encourage the organization of local development corporations, may cause
39 such corporations to be incorporated by public officers or private indi-
40 viduals or reincorporated upon compliance with the requirements of this
41 section, and it is hereby found, determined and declared that in carry-
42 ing out said purposes and in exercising the powers conferred by para-
43 graph (b) of this section such corporations will be acting in the public
44 interest and performing an essential governmental function.

45 (b) Type of corporation.

46 A local development corporation [~~is~~] incorporated for one or more of
47 the purposes described in paragraph (a) of this section shall be a char-
48 itable corporation under this chapter.

49 (d) Purchase or lease of real property owned by a county, city, town
50 or village.

51 (1) The local legislative body of a county, city, town or village or,
52 if there is a board of estimate in a city, then the board of estimate,
53 may by resolution determine that specifically described real property
54 owned by the county, city, town or village is not required for use by
55 such county, city, town or village and authorize the county, city, town
56 or village to sell or lease such real property to a local development

1 corporation incorporated or reincorporated under this article; provided,
2 however, that title to such land be not declared inalienable as a forest
3 preserve or a parkland.

4 (2) Notwithstanding the provisions of any general, special or local
5 law, charter or ordinance to the contrary, no such sale or lease may be
6 made without appraisal, public notice, (except as provided in subpara-
7 graph (4)) or public bidding [~~for such price or rental and upon such~~
8 ~~terms as may be agreed upon between the county, city, town or village~~
9 ~~and said local development corporation~~]; provided, however, that in case
10 of a lease the term may not exceed ninety-nine years and provided,
11 further, that in cities having a population of one million or more, no
12 such sale or lease shall be made without the approval of a majority of
13 the members of the borough [~~improvement~~] board of the borough in which
14 such real property is located.

15 (3) Before any sale or lease to a local development corporation incor-
16 porated or reincorporated under this article shall be authorized, a
17 public hearing shall be held by the local legislative body[~~, or by the~~
18 ~~board of estimate, as the case may be,~~] to consider the proposed sale or
19 lease.

20 (4) Notice of such hearing shall be published at least ten days before
21 the date set for the hearing in such publication and in such manner as
22 may be designated by the local legislative body[~~, or the board of esti-~~
23 ~~mate as the case may be~~]. Such notice shall include a description of the
24 real property proposed to be sold or leased; a statement of the esti-
25 imated fair market value of the real property proposed to be sold or
26 leased; the value of the financial consideration to be received by the
27 county, city, town or village from such sale or lease of the real prop-
28 erty; and a statement of the intended use or disposition of such real
29 property by the local development corporation.

30 (5) A local development corporation, incorporated or reincorporated
31 under this section, which purchases or leases real property from a coun-
32 ty, city, town or village, shall not, without the written approval of
33 the county, city, town or village, use such real property for any
34 purpose except the purposes set forth in the certificate of incorpo-
35 ration or reincorporation of said local development corporation. In the
36 event such real property is used in violation of the restrictions of
37 this paragraph, the attorney-general may bring an action or special
38 proceeding to enjoin the unauthorized use.

39 § 21. Paragraphs (e), (f), (g), (h), and (i) of section 1411 of the
40 not-for-profit corporation law are relettered paragraphs (f), (g), (h),
41 (i), and (j) and a new paragraph (e) is added to read as follows:

42 (e) Contracts with municipalities.

43 Any contract or other agreement between a local development corpo-
44 ration and a municipality or state authority or local authority for one
45 or more of the purposes described in paragraph (a) of this section
46 shall: (i) cause the local development corporation to be defined as a
47 local authority pursuant to subdivision two of section two of the public
48 authorities law; (ii) provide for the municipality or state authority or
49 local authority to receive fair and adequate consideration for the
50 services provided by the local development corporation; (iii) be subject
51 to the requirements of article five-A of the general municipal law; and
52 (iv) have a term not to exceed ten years, subject to one or more
53 renewals for a term not to exceed ten years upon the mutual consent of
54 the parties; provided however that a contract with a municipality shall
55 not be used to finance the municipality's operations or to acquire or
56 improve an asset for use of the municipality.

1 § 22. Paragraph (j) of section 1411 of the not-for-profit corporation
2 law, as relettered by section twenty-one of this act, is amended to read
3 as follows:

4 (j) Effect of section.

5 Corporations incorporated or reincorporated under this section shall
6 be organized and operated exclusively for the purposes set forth in
7 paragraph (a), shall have, in addition to the powers otherwise conferred
8 by law, the powers conferred by paragraph (c) of this section and shall
9 be subject to all the restrictions and limitations imposed by [~~paragraph~~
10 ~~(e) and paragraph (g)] paragraphs (c), (d), (e), (h) and (i) of this~~
11 section. In so far as the provisions of this section are inconsistent
12 with the provisions of any other law, general or special, the provisions
13 of this section shall be controlling as to corporations incorporated or
14 reincorporated hereunder.

15 § 23. Federal preemption and severability. The provisions of each
16 section of this act shall be deemed severable, and the declaration by a
17 court of competent jurisdiction that any part thereof is preempted or
18 otherwise invalid shall not affect the remaining parts thereof.

19 § 24. This act shall take effect on the thirtieth day after it shall
20 have become a law, or January 1, 2021, whichever shall come first;
21 provided, however, that section fifteen of this act shall apply to bonds
22 issued or re-issued on or after the effective date of this act;
23 provided, however, that the amendments to subdivisions 19, 20 and 22 of
24 section 858 of the general municipal law made by section three of this
25 act shall not affect the expiration of such subdivisions and shall be
26 deemed to expire therewith; and provided further, however, that the
27 amendments to subdivision 21 of section 858 of the general municipal law
28 made by section three of this act shall not affect the repeal of such
29 subdivision and shall be deemed repealed therewith.