

# STATE OF NEW YORK

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1635

2021-2022 Regular Sessions

## IN SENATE

January 14, 2021

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

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 manage-

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

LBD02284-01-1

ment plan as provided in title G of the parks, recreation and historic preservation law and which may include or mean an industrial pollution control facility, a recreation facility, educational or cultural facility, 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 provides any legal services to parties other than the agency 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 agency[~~+~~];

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

[~~(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;

(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;

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

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

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

[~~(15)~~] (18) 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 jurisdiction (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 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 affected tax jurisdiction within fifteen days of signing the agreement[~~+~~ In the absence of any such written agreement, payments in lieu of taxes made by an agency shall be allocated in the same proportions as they had been prior to January first, nineteen hundred ninety three for so long as the agency's activities render a project non-taxable by affected tax jurisdictions] and published by the agency on its website;

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

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

1    ~~[(18)]~~ (21) To provide grants to small businesses and not-for-profit  
2 corporations, as defined in section eight hundred fifty-nine-c of this  
3 title, for the purpose of acquiring personal protective equipment or  
4 installing fixtures necessary to prevent the spread of novel coronavi-  
5 rus, COVID-19, during the period in which executive order two hundred  
6 two of two thousand twenty, as amended, is in effect. In order to be  
7 eligible for a grant pursuant to this subdivision, a small business or  
8 not-for-profit corporation must meet the requirements of paragraph a of  
9 subdivision three of section eight hundred fifty-nine-c of this title.  
10 No industrial development agency may provide a small business or not-  
11 for-profit corporation with more than ten thousand dollars pursuant to  
12 this subdivision; and

13    ~~[(19)]~~ (22) To ~~[do all things necessary or convenient to]~~ carry out  
14 its purposes and exercise ~~[the]~~ those powers expressly given in this  
15 title.

16    § 4. The general municipal law is amended by adding a new section  
17 858-c to read as follows:

18    § 858-c. Purchase or lease of real property owned by a county, city,  
19 town or village. 1. The local legislative body of a county, city, town  
20 or village may by resolution determine that specifically described real  
21 property owned by the county, city, town or village is not required for  
22 use by such county, city, town or village and authorize the county,  
23 city, town or village to sell or lease such real property to an agency;  
24 provided, however, that title to such land be not declared inalienable  
25 as a forest preserve or a parkland.

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

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

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

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

50    § 6. The opening paragraph and subdivisions 1 and 2 of section 859-a  
51 of the general municipal law, as added by chapter 356 of the laws of  
52 1993, are amended and a new subdivision 3-a is added to read as follows:

53    Prior to providing any financial assistance ~~[of]~~ totaling more than  
54 one hundred thousand dollars to any project, the agency must comply with  
55 the following prerequisites:



1 1. The agency must adopt a resolution describing the project and the  
2 type and amount of financial assistance that the agency is contemplating  
3 with respect to such project. Such assistance shall be consistent with  
4 the uniform ~~[tax-exemption]~~ financial assistance policy adopted by the  
5 agency pursuant to subdivision four of section eight hundred seventy-  
6 four of this ~~[chapter]~~ title, unless the agency has followed the proce-  
7 dures for deviation from such policy specified in paragraph (b) of such  
8 subdivision.

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

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

27 § 7. The general municipal law is amended by adding four new sections  
28 859-d, 859-e, 859-f and 859-g to read as follows:

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

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

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

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

1 (d) Economic benefits. Funding decisions shall consider the potential  
2 economic and financial impact of the project on existing businesses in  
3 the area, on the affected tax jurisdictions, and on the local labor  
4 market.

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

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

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

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

16 § 859-e. Financial assistance agreement. 1. The agency shall enter  
17 into a written agreement with the project applicant prior to providing  
18 financial assistance. The agreement shall include the following informa-  
19 tion:

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

23 (b) a description of the amount of financing to be provided by the  
24 project applicant, including the amount and type of capital investment  
25 to be provided;

26 (c) the purpose of the project;

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

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

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

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

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

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

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

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

53 § 859-f. Recapture of certain financial assistance. 1. The agency,  
54 pursuant to the terms and conditions of its financial assistance agree-  
55 ment, may recapture financial assistance to a project from real property  
56 tax exemptions, mortgage recording tax exemptions, or local sales or

1 compensating use tax exemptions if (a) the project violates state or  
2 federal tax law, labor law, environmental protection law, or contract  
3 law, or any state or federal rule or regulation implementing such law,  
4 as determined by a court of competent jurisdiction or administrative  
5 tribunal, provided that such court or tribunal concludes that the  
6 violation would cause material harm to the economy or quality of life of  
7 the community; or (b) all or part of the project's business activity or  
8 workforce is moved to a location outside the community served by the  
9 agency and by doing so violates the terms and conditions of its finan-  
10 cial assistance agreement.

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

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

26 § 859-g. Wages and standards. Whenever a recipient of financial  
27 assistance from an agency enters into a contract, subcontract, lease or  
28 other agreement for or in connection with the construction, demolition,  
29 reconstruction, rehabilitation, repair, or renovation of an assisted  
30 project, the recipient of financial assistance shall pay workers engaged  
31 in such work no less than the prevailing rate of wage and supplements  
32 under article eight of the labor law.

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

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

51 (b) For the purposes of this subdivision, "competitive advantage"  
52 shall include trade secrets that are submitted to an agency by a commer-  
53 cial enterprise or derived from information obtained from a commercial  
54 enterprise and which if disclosed would cause substantial injury to the  
55 competitive position of the subject enterprise. Other factors to be  
56 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;  
(iii) the extent of measures taken by a business to guard the secrecy of the information;  
(iv) the value of the information to a business and to its competitors;  
(v) the amount of effort or money expended by a business in developing the information; and,  
(vi) the ease or difficulty with which the information could be properly acquired or duplicated by others. If there has been a voluntary disclosure by the plaintiff, or if the facts pertaining to the matter are a subject of general knowledge in the trade, then any property right has evaporated.

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

(4) (a) The agency shall ~~establish~~ adopt a uniform ~~tax exemption~~ financial assistance policy, ~~with input from~~ subject to the approval of all affected tax jurisdictions, which shall be applicable to the provision of financial assistance pursuant to section eight hundred fifty-nine-a of this ~~chapter~~ title and shall provide guidelines for the claiming of real property, mortgage recording, and sales tax exemptions. Such guidelines shall include, but not be limited to: period of exemption; payments in lieu of taxes, as a percentage of ~~exemption~~ taxes that would have been levied by or on behalf of affected tax jurisdictions if the project was not tax exempt by reason of agency involvement; types of projects for which exemptions can be claimed; procedures for payments in lieu of taxes and instances in which real property appraisals are to be performed as a part of an application for tax exemption; in addition, agencies shall in adopting such policy consider such issues as: the extent to which a project will create or retain permanent, private sector jobs; the estimated value of any tax exemptions to be provided; whether affected tax jurisdictions shall be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided; the impact of a proposed project on existing and proposed businesses and economic development projects in the vicinity; the amount of private sector investment generated or likely to be generated by the proposed project; the demonstrated public support for the proposed project; the likelihood of accomplishing the proposed project in a timely fashion; the effect of the proposed project upon the environment; the extent to which the project will utilize, to the fullest extent practicable and economically feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures; the extent to which the proposed project will require the provision of additional services, including, but not limited to additional educational, transportation, police, emergency medical or fire services; and the extent to which the proposed project will provide additional sources of revenue for municipalities and school districts. The adopted uniform financial assistance policy shall be provided to the chief executive officer and the members of the governing body of each affected tax jurisdiction and shall be made available for public inspection at the agency's office and on the agency's website upon its adoption.

(b) The agency shall ~~establish a procedure~~ adopt criteria for deviation from the uniform ~~tax exemption~~ financial assistance policy

required pursuant to this subdivision, which shall be subject to the approval of all affected local tax jurisdictions. The agency shall set forth in writing the reasons for deviation from such policy, and shall further notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefor not less than sixty days before such deviation from the uniform tax exemption policy takes effect.

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

§ 1953. Purpose and powers of the authority. The purposes of the authority shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehouse, civic facilities, and commercial research facilities including industrial pollution control facilities, transportation facilities including but not limited to those relating to water, highway, rail and air, in one or more areas of the city, particularly but not exclusively at the site of what was formerly the Troy airport including an airstrip or airport located in the southern section 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 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 the 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. To carry out said purposes, 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 nineteen hundred ~~five~~ fifty-five of this title;

5. To acquire real property within the city of Troy 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;

1     ~~[6-]~~ 7. With the consent of the city, to use agents, employees and  
2 facilities of the city, paying the city its agreed proportion of the  
3 compensation or costs;

4     ~~[7-]~~ 8. To appoint officers, agents and employees, to prescribe their  
5 qualifications and to fix their compensation and to pay the same out of  
6 funds of the authority, subject, however, to the provisions of the civil  
7 service law as hereinafter provided in section nineteen hundred ~~[and~~  
8 ~~four]~~ fifty-four of this title;

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

20     ~~[9-]~~ 10. To make contracts and leases upon such terms as the authority  
21 shall deem appropriate, including without limitation leases which grant  
22 the tenant of a project an option to renew or an option to purchase the  
23 project, or both, at a fixed or otherwise predetermined price and to  
24 execute all instruments necessary or convenient;

25     ~~[10-]~~ 11. To acquire, construct, reconstruct, lease, improve, main-  
26 tain, equip or furnish one or more projects;

27     ~~[11-]~~ 12. To accept gifts, grants, loans or contributions from, and  
28 enter into contracts or other transactions with, the United States and  
29 the state or any agency of either of them, any municipality, any public  
30 or private corporation or any other legal entity, and to use any such  
31 gifts, grants, loans or contributions for any of its corporate purposes;

32     ~~[12-]~~ 13. To provide financial assistance in the form of loans to  
33 improve, maintain or equip one or more projects consistent with its  
34 corporate purposes;

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

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

39     ~~[13-]~~ 16. To designate the depositories of its money either within or  
40 without the state of New York;

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

1 same proportions as they had been prior to January first, nineteen  
2 hundred ninety-three for so long as the authority's activities render a  
3 project non-taxable by affected tax jurisdictions.

4 ~~[15.]~~ 18. To establish and reestablish its fiscal year; and

5 ~~[16.]~~ 19. To do all things necessary or convenient to carry out its  
6 purposes and exercise the powers expressly given in this title.

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

10 § 1953-a. Additional prerequisites to the provision of financial  
11 assistance. Prior to providing any financial assistance ~~[of]~~ totaling  
12 more than one hundred thousand dollars to any project, the authority  
13 must comply with the following prerequisites:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (b) a description of the amount of financing to be provided by the  
43 project applicant, including the amount and type of capital investment  
44 to be provided;

45 (c) the purpose of the project;

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

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

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

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



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

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

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

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

16 § 1953-d. Recapture of certain financial assistance. 1. The authority,  
17 pursuant to the terms and conditions of its financial assistance agree-  
18 ment, may recapture financial assistance to a project from the proceeds  
19 of bonds issued by the authority, mortgage recording tax exemptions, or  
20 local sales or compensating use tax exemptions if (a) the project  
21 violates state or federal tax law, labor law, environmental protection  
22 law, or contract law, or any state or federal rule or regulation imple-  
23 menting such law, as determined by a court of competent jurisdiction or  
24 administrative tribunal, provided that such court or tribunal concludes  
25 that the violation would cause material harm to the economy or quality  
26 of life of the community; or (b) all or part of the project's business  
27 activity or workforce is moved to a location outside the community  
28 served by the authority and by doing so violates the terms and condi-  
29 tions of its financial assistance agreement.

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

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

46 § 1953-e. Wages and standards. Whenever a recipient of financial  
47 assistance from the authority enters into a contract, subcontract, lease  
48 or other agreement for or in connection with the construction, demoli-  
49 tion, reconstruction, rehabilitation, repair, or renovation of an  
50 assisted project, the recipient of financial assistance shall pay work-  
51 ers engaged in such work no less than the prevailing rate of wage and  
52 supplements under article eight of the labor law.

53 § 13. Section 1963-a of the public authorities law, as amended by  
54 chapter 357 of the laws of 1993 and subdivision 1 as amended by chapter  
55 386 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 local taxing jurisdictions, which shall be applicable to provisions of financial assistance pursuant to section nineteen hundred fifty-three-a of this title and shall provide guidelines for the claiming of real property, mortgage recording, and sales tax exemptions. Such guidelines shall include, but not be limited to: period of exemption; payments in lieu of taxes as a percentage of [~~exemption~~] taxes that would have been levied by or on behalf of affected tax jurisdictions if the project was not exempt by reason of authority involvement; types of projects for which exemptions can be claimed; procedures for payments in lieu of taxes and instances in which real property appraisals are to be performed as a part of an application for tax exemption; in addition, the authority in adopting such policy shall consider such issues as: the extent to which a project will create or retain permanent, private sector jobs; the estimated value of any tax exemption to be provided; whether affected tax jurisdictions should be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided; the impact of a proposed project on existing and proposed businesses and economic development projects in the vicinity; the amount of private sector investment generated or likely to be generated by the proposed project; the demonstrated public support for the proposed project; the likelihood of accomplishing the proposed project in a timely fashion; the effect of the proposed project upon the environment; the extent to which the project will utilize, to the fullest extent practicable and economically feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures; the extent to which the proposed project will require the provision of additional services, including, but not limited to additional educational, transportation, police, emergency medical or fire services; and the extent to which the proposed project will provide additional sources [~~or~~] of revenue for municipalities and school districts. The adopted uniform financial assistance policy shall be provided to the chief executive officer and members of the governing body of each affected tax jurisdiction and shall be made available for public inspection at the authority's office and on the authority's website upon its adoption.

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

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

§ 2306. Purpose and powers of the authority. The purposes of the authority shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehouse, civic facili-

1 ties, commercial and research facilities and facilities for use by a  
2 federal agency or a medical facility including industrial pollution  
3 control facilities, which may include transportation facilities includ-  
4 ing but not limited to those relating to water, highway, rail and air,  
5 in one or more areas of the city, and thereby advance the job opportu-  
6 nities, health, general prosperity and economic welfare of the people of  
7 said city and to improve their medical care and standard of living;  
8 provided, however, that the authority shall not undertake any project if  
9 the completion thereof would result in the removal of an industrial or  
10 manufacturing plant of the project occupant from one area of the state  
11 to another area of the state or in abandonment of one or more plants or  
12 facilities of the project applicant located within the state, provided,  
13 however, that neither restriction shall apply if the authority shall  
14 determine on the basis of the application before it that the project is  
15 reasonably necessary to discourage the project occupant from removing  
16 such other plant or facility to a location outside the state or is  
17 reasonably necessary to preserve the competitive position of the project  
18 occupant in its respective industry. Except as otherwise provided for in  
19 this section, no financial assistance of the authority shall be provided  
20 in respect of any project where facilities or property that are primari-  
21 ly used in making retail sales to customers who personally visit such  
22 facilities constitute more than one-third of the total project cost. For  
23 the purposes of this article, "retail sales" shall mean: (i) sales by a  
24 registered vendor under article twenty-eight of the tax law primarily  
25 engaged in the retail sale of tangible personal property, as defined in  
26 subparagraph (i) of paragraph four of subdivision (b) of section eleven  
27 hundred one of the tax law; or (ii) sales of a service to such custom-  
28 ers. Except, however, that tourism destination projects shall not be  
29 prohibited by this paragraph. For the purpose of this paragraph, "tour-  
30 ism destination" shall mean a location or facility which is likely to  
31 attract a significant number of visitors from outside the economic  
32 development region as established by section two hundred thirty of the  
33 economic development law, in which the project is located.

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

55 1. To sue and be sued;

56 2. To have a seal and alter the same at pleasure;

1 3. To acquire, hold and dispose of personal property for its corporate  
2 purpose;

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

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

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

17 [~~6-~~] 7. With the consent of the city, to use agents, employees and  
18 facilities of the city, paying the city its agreed proportion of the  
19 compensation or costs[-];

20 [~~7-~~] 8. To appoint officers, agents and employees, to prescribe their  
21 qualifications and to fix their compensation and to pay the same out of  
22 funds of the authority, subject, however, to the provisions of the civil  
23 service law hereinafter provided in section twenty-three hundred eight  
24 of this title;

25 [~~8-~~] 9. To retain and employ financial advisors, engineers, archi-  
26 tects, attorneys and other consultants for professional and technical  
27 assistance and advice; that an attorney acting as bond counsel for a  
28 project must file with the authority a written statement in which the  
29 attorney identifies each party to the transaction which such attorney  
30 represents. If bond counsel provides any legal services to the parties  
31 other than the authority, the written statement must describe the nature  
32 of legal services provided by such bond counsel to all parties to the  
33 transaction, including the nature of the services provided to the  
34 authority;

35 [~~9-~~] 10. To make contracts and leases upon such terms as the authority  
36 shall deem appropriate, including without limitation leases which grant  
37 the tenant of a project an option to renew or an option to purchase the  
38 project, or both, at a fixed or otherwise predetermined price, and to  
39 execute all instruments necessary or convenient;

40 [~~10-~~] 11. To acquire, construct, reconstruct, lease, improve, main-  
41 tain, equip or furnish one or more projects;

42 [~~11-~~] 12. To accept gifts, grants, loans or contributions from, and  
43 enter into contracts or other transactions with, the United States and  
44 the state or any agency of either of them, any municipality, any public  
45 or private corporation or any other legal entity, and to use any such  
46 gifts, grants, loans or contributions for any of its corporate purposes;

47 [~~12-~~] 13. To provide financial assistance in the form of loans to  
48 improve, maintain or equip one or more projects consistent with its  
49 corporate purposes;

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

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

54 [~~13-~~] 16. To designate the depositories of its money in the city of  
55 Auburn[-];

1   ~~[14.]~~ 17. To enter into agreements requiring payments in lieu of  
2 taxes. Such agreements shall be in writing and in addition to other  
3 terms shall contain: the amount due annually to each affected tax juris-  
4 diction (or a formula by which the amount due can be calculated), the  
5 name and address of the person, office or agency to which payment shall  
6 be delivered, the date on which the payment shall be made, and the date  
7 on which payment shall be considered delinquent if not paid. Unless  
8 otherwise agreed by the affected tax jurisdictions, any such agreement  
9 shall provide that payments in lieu of taxes shall be allocated among  
10 affected tax jurisdictions in proportion to the amount of real property  
11 tax and other taxes which would have been received by each affected tax  
12 jurisdiction had the project not been tax exempt due to the status of  
13 the agency involved in the project. A copy of any such agreement shall  
14 be delivered to each tax affected jurisdiction within fifteen days of  
15 signing the agreement. In the absence of any such written agreement,  
16 payments in lieu of taxes shall be allocated in the same proportions as  
17 they had been prior to January first, nineteen hundred ninety-three for  
18 so long as the authority's activities render a project non-taxable by  
19 affected tax jurisdictions~~[.]~~;

20   ~~[15.]~~ 18. To establish and reestablish its fiscal year; and

21   ~~[16.]~~ 19. To do all things necessary or convenient to carry out its  
22 purposes and exercise the powers expressly given in this title.

23   § 15. Section 2307 of the public authorities law, as added by chapter  
24 356 of the laws of 1993, and subdivision 1 as amended by chapter 357 of  
25 the laws of 1993, is amended to read as follows:

26   § 2307. Additional prerequisites to the provision of financial assist-  
27 ance. Prior to providing any financial assistance ~~[of]~~ totaling more  
28 than one hundred thousand dollars to any project, the authority must  
29 comply with the following prerequisites:

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

38   2. The authority must hold a public hearing with respect to the  
39 project and the proposed financial assistance being contemplated by the  
40 authority not less than thirty days prior to executing a written agree-  
41 ment to provide financial assistance. At said public hearing, inter-  
42 ested parties shall be provided reasonable opportunity, both orally and  
43 in writing, to present their views with respect to the project and the  
44 type and amount of financial assistance to be provided. The authority  
45 shall also accept written comments up to seven days after such hearing  
46 is held.

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



1 4. The authority shall maintain a complete record of the hearing,  
2 including all documents and oral statements, and written statements  
3 presented at or within seven days following such hearing. All members  
4 shall be provided with a copy of such record at least seven days before  
5 deciding whether to approve financial assistance for the project. Such  
6 record shall also be posted on the authority's website at the time it is  
7 provided to members.

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

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

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

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

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

37 (d) Economic benefits. Funding decisions shall consider the potential  
38 economic and financial impact of the project on existing businesses in  
39 the area, on the affected tax jurisdictions, and on the local labor  
40 market.

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

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

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

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

52 § 2307-b. Financial assistance agreement. 1. The authority shall enter  
53 into a written agreement with the project applicant prior to providing  
54 financial assistance. The agreement shall include the following informa-  
55 tion:

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

4 (b) a description of the amount of financing to be provided by the  
5 project applicant, including the amount and type of capital investment  
6 to be provided;

7 (c) the purpose of the project;

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

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

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

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

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

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

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

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

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

48 2. An authority which elects to initiate the recapture of financial  
49 assistance pursuant to subdivision one of section eight hundred fifty-  
50 nine-e of the general municipal law must notify the recipient of such  
51 financial assistance in writing that it is in default of its financial  
52 assistance agreement and may direct the recipient of financial assist-  
53 ance to repay up to the full amount of such financial assistance  
54 received as of the date of the written notice plus interest at the rate  
55 set forth in section five thousand four of the civil practice law and  
56 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.

§ 2307-d. 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.

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

§ 2315. 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 local taxing jurisdictions, which shall be applicable to provisions of financial assistance pursuant to section twenty-three hundred seven of this title and shall provide guidelines for the claiming of real property, mortgage recording, and sales tax exemptions. Such guidelines shall include, but not be limited to: period of exemption; payments in lieu of taxes as a percentage of ~~[exemption]~~ taxes that would have been levied by or on behalf of affected tax jurisdictions if the project was not exempt by reason of authority involvement; types of projects for which exemptions may be claimed; procedures for payments in lieu of taxes and instances in which real property appraisals are to be performed as a part of an application for tax exemption; in addition, the authority in adopting such policy shall consider such issues as: the extent to which a project will create or retain permanent, private sector jobs; the estimated value of any tax exemption to be provided; whether affected tax jurisdictions should be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided; the impact of a proposed project on existing and proposed businesses and economic development projects in the vicinity; the amount of private sector investment generated or likely to be generated by the proposed project; the demonstrated public support for the proposed project; the likelihood of accomplishing the proposed project in a timely fashion; the effect of the proposed project upon the environment; the extent to which the project will utilize, to the fullest extent practicable and economically feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures; the extent to which the proposed project will require the provision of additional services, including, but not limited to additional educational, transportation, police, emergency medical or fire services; and the extent to which the proposed project will provide additional sources of revenue for municipalities and school districts. The adopted uniform financial assistance policy shall be provided to the chief executive officer and members of the governing body of each affected tax jurisdiction and shall be made available for public inspection at the authority's office and on the authority's website upon its adoption.

2. The authority shall ~~[establish a procedure]~~ adopt criteria for deviation from the uniform ~~[tax exemption]~~ financial assistance policy

1 required pursuant to this section which shall be subject to the approval  
2 of affected local tax jurisdictions. The authority shall set forth in  
3 writing the reasons for deviation from such policy, and shall further  
4 notify the affected local taxing jurisdictions of the proposed deviation  
5 from such policy and the reasons therefor not less than sixty days  
6 before such deviation from the uniform tax exemption policy shall take  
7 effect.

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

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

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

26 § 206. Financial assistance agreement.

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

36 2. The agreement shall include the following information:

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

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

43 (c) the purpose of the project;

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

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

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

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

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

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

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

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

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

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

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

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

50    8. For the purposes of this section, "project" shall mean any land,  
51 any building or other improvement, and all real and personal properties  
52 located within the state of New York and within or outside or partially  
53 within and partially outside the municipality for whose benefit the  
54 agency was created, including, but not limited to, machinery, equipment  
55 and other facilities deemed necessary or desirable in connection there-  
56 with, or incidental thereto, whether or not now in existence or under



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

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

21 (a) Purposes.

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

48 (b) Type of corporation.

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

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

54 (1) The local legislative body of a county, city, town or village or,  
55 if there is a board of estimate in a city, then the board of estimate,  
56 may by resolution determine that specifically described real property

1 owned by the county, city, town or village is not required for use by  
2 such county, city, town or village and authorize the county, city, town  
3 or village to sell or lease such real property to a local development  
4 corporation incorporated or reincorporated under this article; provided,  
5 however, that title to such land be not declared inalienable as a forest  
6 preserve or a parkland.

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

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

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

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

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

45 (e) Contracts with municipalities.

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

1 the parties; provided however that a contract with a municipality shall  
2 not be used to finance the municipality's operations or to acquire or  
3 improve an asset for use of the municipality.

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

7 (j) Effect of section.

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

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

22 § 24. This act shall take effect on the thirtieth day after it shall  
23 have become a law, or January 1, 2022, whichever shall come first;  
24 provided, however, that section fifteen of this act shall apply to bonds  
25 issued or re-issued on or after the effective date of this act;  
26 provided, however, that the amendments to subdivisions 19 and 20 of  
27 section 858 of the general municipal law made by section three of this  
28 act shall not affect the expiration of such subdivisions and shall be  
29 deemed to expire therewith; and provided further, however, that the  
30 amendments to subdivisions 21 and 22 of section 858 of the general  
31 municipal law made by section three of this act shall not affect the  
32 repeal of such subdivisions and shall be deemed repealed therewith.