

# STATE OF NEW YORK

243

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. MAYER, SKOUFIS, BIAGGI, HARCKHAM, KRUEGER, SAVINO, STAVISKY -- 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, in relation to industrial development agencies

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

Section 1. Section 854 of the general municipal law is amended by adding a new subdivision 21 to read as follows:

(21) "Labor organization" -- shall mean any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection and which is not a company union.

§ 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 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~~ shall include ~~representatives~~ at least one representative of ~~[local government, school boards, organized labor and business]~~ a local labor organization. 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

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

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1 for their services but shall be entitled to the necessary expenses,  
2 including traveling expenses, incurred in the discharge of their duties.

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

6 § 859-a. Additional prerequisites to the provisions of financial  
7 assistance or payments in lieu of taxes. Prior to providing any finan-  
8 cial assistance or payments in lieu of taxes of more than one hundred  
9 thousand dollars to any project, the agency must comply with the follow-  
10 ing prerequisites:

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

19 2. The agency must hold a public hearing with respect to the project  
20 and the proposed financial assistance or payments in lieu of taxes being  
21 contemplated by the agency. Said public hearing shall be held in a city,  
22 town or village where the project proposes to locate. At said public  
23 hearing, interested parties shall be provided reasonable opportunity,  
24 both orally and in writing, to present their views with respect to the  
25 project.

26 3. The agency must give at least ten days published notice of said  
27 public hearing and shall, at the same time, provide notice of such hear-  
28 ing to the chief executive officer of each affected tax jurisdiction  
29 within which the project is located, each school board president and  
30 superintendent of each school district within which the project is  
31 located, and to all state senators and members of the state assembly who  
32 represent any portion of any affected tax jurisdiction that is subject  
33 to the proposed financial assistance or payments in lieu of taxes. The  
34 notice of hearing must state the time and place of the hearing, contain  
35 a general, functional description of the project, describe the prospec-  
36 tive location of the project, identify the initial owner, operator or  
37 manager of the project and generally describe the financial assistance  
38 or payments in lieu of taxes contemplated by the agency with respect to  
39 the project.

40 4. Each agency shall develop a standard application form, which shall  
41 be used by the agency to accept requests for financial assistance or  
42 payments in lieu of taxes from all individuals, firms, companies, devel-  
43 opers or other entities or organizations. The standard application form  
44 shall be submitted by or on behalf of the applicant, and subscribed and  
45 affirmed under the penalties of perjury by the applicant, or on behalf  
46 of the applicant by the chief executive officer or such other individual  
47 that is duly authorized to bind the applicant, as true, accurate and  
48 complete to the best of his or her knowledge. The standard application  
49 form shall include the following, and may include such other supple-  
50 mental information as determined to be necessary and appropriate by the  
51 agency, including supporting documents and information provided by or on  
52 behalf of the applicant:

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

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

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

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

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

(f) the projected number of full time equivalent jobs that would be retained and that would be created if the request for financial assistance or payments in lieu of taxes is granted, the projected timeframe for the creation of new jobs, the estimated salary and fringe benefit averages or ranges for categories of the jobs that would be retained or created if the request for financial assistance or payments in lieu of taxes is granted, and an estimate of the number of residents of the economic development region as established pursuant to section two hundred thirty of the economic development law or the labor market area as defined by the agency, in which the project is located that would fill such jobs. The labor market area defined by the agency for this purpose may include no more than six contiguous counties in the state, including the county in which the project is to be located;

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

(h) a statement that the owner, occupant or operator receiving financial assistance or payments in lieu of taxes is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations; and

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

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

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

(b) a written cost-benefit analysis by the agency that identifies the extent to which a project will create or retain permanent, private sector jobs; the estimated value of any tax exemptions to be provided;

1 the amount of private sector investment generated or likely to be gener-  
2 ated by the proposed project; the likelihood of accomplishing the  
3 proposed project in a timely fashion; and the extent to which the  
4 proposed project will provide additional sources of revenue for munic-  
5 ipalities and school districts; and any other public benefits that might  
6 occur as a result of the project;

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

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

16 6. Each agency shall develop a uniform agency project agreement that  
17 sets forth terms and conditions under which financial assistance or  
18 payments in lieu of taxes shall be provided. The uniform agency project  
19 agreement shall be used by the agency and no financial assistance or  
20 payments in lieu of taxes shall be provided in the absence of the  
21 execution of such an agreement. The uniform agency project agreement  
22 shall, at a minimum:

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

26 (b) require each project owner, occupant or operator receiving finan-  
27 cial benefits or payments in lieu of taxes to provide annually a certi-  
28 fied statement and documentation: (i) enumerating the full time equiv-  
29 alent jobs retained and the full time equivalent jobs created as a  
30 result of the financial assistance or payments in lieu of taxes, by  
31 category, including full time equivalent independent contractors or  
32 employees of independent contractors that work at the project location,  
33 and (ii) indicating that the salary and fringe benefit averages or rang-  
34 es for categories of jobs retained and jobs created that was provided in  
35 the application is still accurate and if it is not still accurate,  
36 providing a revised list of salary and fringe benefit averages or ranges  
37 for categories of jobs retained and jobs created[~~+~~];

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

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

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

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

6 § 4. The general municipal law is amended by adding a new section  
7 859-d to read as follows:

8 § 859-d. Notice of agenda. A printed calendar of items to be heard,  
9 which may be subject to later amendment, shall be made available to the  
10 public and forwarded to the members and chairman of the industrial  
11 development agency at least three days in advance of the meeting. Where  
12 an industrial development agency maintains a website, the notice of  
13 agenda shall also be posted on such industrial development agency's  
14 website.

15 § 5. The general municipal law is amended by adding a new section  
16 859-e to read as follows:

17 § 859-e. School board reporting. Every industrial development agency,  
18 continued or created by this chapter or any other law of the state shall  
19 submit to the local school board president and superintendent or boards  
20 presidents and superintendents overlapping with an industrial develop-  
21 ment agency, within ninety days after the end of its fiscal year, a copy  
22 of the final report required by subdivision two of section twenty-eight  
23 hundred of the public authorities law and the audits required by subdi-  
24 vision two of section twenty-eight hundred two of the public authorities  
25 law.

26 § 6. This act shall take effect immediately.