

# STATE OF NEW YORK

4339--A

2021-2022 Regular Sessions

## IN SENATE

February 3, 2021

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the not-for-profit corporation law and the public authorities law, in relation to the applicability of open meetings and freedom of information laws to certain not-for-profit corporations

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

1 Section 1. Section 104 of the not-for-profit corporation law is  
2 amended by adding a new subdivision (h) to read as follows:

3 (h) The department shall transmit electronically to the authorities  
4 budget office a copy of every certificate of incorporation filed or  
5 delivered where the incorporator has indicated on the certificate that  
6 he or she is filing said certificate on the behalf or at the behest of a  
7 municipal corporation, state or local authority, or district.

8 § 2. Subdivision 2-b of paragraph (a) of section 402 of the not-for-  
9 profit corporation law, as added by chapter 23 of the laws of 2014, is  
10 amended to read as follows:

11 (2-b) If it is not formed to engage in any activity or for any purpose  
12 requiring consent or approval of any state official, department, board,  
13 agency or other body, or does not require consent pursuant to subpara-  
14 graph (2) or (3) of paragraph (w) of section four hundred four of this  
15 article, a statement that no such consent or approval is required. Such  
16 statement shall be deemed conclusive for purposes of filing by the  
17 department of state. If subsequent to submitting the certificate of  
18 incorporation for filing, the corporation plans to engage in any activ-  
19 ity requiring consent or approval pursuant to section 404 (approvals,  
20 notices and consents) of this chapter, the corporation shall obtain such  
21 consent or approval and accordingly amend its certificate of incorpo-  
22 ration pursuant to article eight of this chapter.

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

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1 § 3. Paragraph (a) of section 402 of the not-for-profit corporation  
2 law is amended by adding a new subparagraph 9 to read as follows:

3 (9) A statement whether the corporation is being incorporated on the  
4 behalf or at the behest of any municipal corporation, state or local  
5 authority, or district. If so, the incorporator shall identify such  
6 municipal corporation, state or local authority, or district.

7 § 4. Section 404 of the not-for-profit corporation law is amended by  
8 adding a new paragraph (w) to read as follows:

9 (w) Every certificate of incorporation which includes any of the  
10 following shall have endorsed thereon or annexed thereto the consent of  
11 the director of the authorities budget office:

12 (1) includes among its purposes the relieving and reducing of unem-  
13 ployment, promoting and providing for additional and maximum employment,  
14 bettering and maintaining job opportunities, instructing or training  
15 individuals to improve or develop their capabilities for such jobs,  
16 carrying on scientific research for the purpose of aiding a community or  
17 geographical area by attracting new industry to the community or area or  
18 by encouraging the development of, or retention of, an industry in the  
19 community or area, and lessening the burdens of government and acting in  
20 the public interest, or any abbreviation or derivative thereof in a  
21 context that indicates or implies that the corporation is formed for any  
22 of the above purposes;

23 (2) indicates that one or more individuals who serve as officers or  
24 employees of any municipal corporation, state or local authority, or  
25 district shall: (i) select either a majority of the corporation's board  
26 of directors or the corporation's chief executive officer; (ii) consti-  
27 tute a majority of the voting strength that selects either a majority of  
28 the corporation's board of directors or the corporation's chief execu-  
29 tive officer; or (iii) serve as: (A) a majority of the corporation's  
30 board of directors; or (B) in his or her official capacity, the corpo-  
31 ration's chief executive officer; or (C) in his or her official capaci-  
32 ty, a director in the corporation; or

33 (3) indicates that such corporation is being incorporated on the  
34 behalf or at the behest of any municipal corporation, state or local  
35 authority, or district.

36 The director shall make such inquiry into the purposes of the proposed  
37 corporation as he or she shall deem advisable.

38 § 5. Paragraph (a) of section 1411 of the not-for-profit corporation  
39 law, as amended by chapter 847 of the laws of 1970, is amended to read  
40 as follows:

41 (a) Purposes.

42 This section shall provide an additional and alternate method of  
43 incorporation or reincorporation of not-for-profit corporations for any  
44 of the purposes set forth in this paragraph and shall not be deemed to  
45 alter, impair or diminish the purposes, rights, powers or privileges of  
46 any corporation heretofore or hereafter incorporated under this section  
47 or under the stock or business corporation laws. Corporations may be  
48 incorporated or reincorporated under this section as not-for-profit  
49 local development corporations operated for the exclusively charitable  
50 or public purposes of relieving and reducing unemployment, promoting and  
51 providing for additional and maximum employment, bettering and maintain-  
52 ing job opportunities, instructing or training individuals to improve or  
53 develop their capabilities for such jobs, carrying on scientific  
54 research for the purpose of aiding a community or geographical area by  
55 attracting new industry to the community or area or by encouraging the  
56 development of, or retention of, an industry in the community or area,

1 and lessening the burdens of government and acting in the public inter-  
2 est, and any one or more counties, cities, towns or villages of the  
3 state, or any combination thereof, or the New York job development  
4 authority in exercising its power under the public authorities law to  
5 encourage the organization of local development corporations, may cause  
6 such corporations to be incorporated by public officers or private indi-  
7 viduals or reincorporated upon compliance with the requirements of this  
8 section, and it is hereby found, determined and declared that in carry-  
9 ing out said purposes and in exercising the powers conferred by para-  
10 graph (b) such corporations will be performing an essential governmental  
11 function. A not-for-profit corporation may not incorporate or reincorpo-  
12 rate under this section if its sole corporate purpose is for lessening  
13 the burdens of government and acting in the public interest.

14 § 6. Subparagraph 2 of paragraph (d) of section 1411 of the not-for-  
15 profit corporation law is amended to read as follows:

16 (2) Notwithstanding the provisions of any general, special or local  
17 law, charter or ordinance to the contrary, such sale or lease may be  
18 made without appraisal (except as may be necessary in regard to subpara-  
19 graph (4) of this paragraph), public notice[~~r~~] (except as provided in  
20 subparagraph (4) of this paragraph), or public bidding for such price or  
21 rental and upon such terms as may be agreed upon between the county,  
22 city, town or village and said local development corporation; provided,  
23 however, that in case of a lease the term may not exceed [~~ninety-nine~~]  
24 five years and provided, further, that in cities having a population of  
25 one million or more, no such sale or lease shall be made without the  
26 approval of a majority of the members of the borough improvement board  
27 of the borough in which such real property is located.

28 § 7. Subparagraph 4 of paragraph (d) of section 1411 of the not-for-  
29 profit corporation law is amended to read as follows:

30 (4) Notice of such hearing shall be published at least [~~ten~~] twenty-  
31 one days before the date set for the hearing in such publication and in  
32 such manner as may be designated by the local legislative body, or the  
33 board of estimate as the case may be. Such notice shall also include: a  
34 description of the property at issue; the value of the proposed consid-  
35 eration to be received from the sale or lease; the estimated fair market  
36 value of the asset; and a statement of the intended use or disposition  
37 of the property by the local development corporation.

38 § 8. Paragraph (i) of section 1411 of the not-for-profit corporation  
39 law is amended to read as follows:

40 (i) Contracts between a municipal corporation, public authority, or  
41 district and a local development corporation.

42 Any contract or other agreement between a local development corpo-  
43 ration and a municipal corporation, state authority or local authority,  
44 or district for one or more of the purposes enumerated in paragraph (a)  
45 of this section shall: (1) cause the local development corporation to be  
46 defined as a local authority pursuant to subdivision two of section two  
47 of the public authorities law; (2) provide for the municipal corpo-  
48 ration, state authority or local authority, or district to receive fair  
49 and adequate consideration; (3) be subject to the requirements of arti-  
50 cle five-A of the general municipal law; and (4) have a term not to  
51 exceed five years, subject to one or more subsequent renewals for a term  
52 not to exceed five years each upon the mutual consent of the parties;  
53 provided however that a contract with a municipal corporation shall not  
54 be used to finance the municipal corporation's operations or to acquire  
55 or improve an asset for use of the municipal corporation.

56 (j) Effect of section.

1 Corporations incorporated or reincorporated under this section shall  
2 be organized and operated exclusively for the purposes set forth in  
3 paragraph (a) of this section, shall have, in addition to the powers  
4 otherwise conferred by law, the powers conferred by paragraph (c) of  
5 this section and shall be subject to all the restrictions [~~and~~], limita-  
6 tions and obligations imposed by [~~paragraph~~] paragraphs (e) [~~and para-~~  
7 ~~graph~~], (g) and (i) of this section. In so far as the provisions of  
8 this section are inconsistent with the provisions of any other law,  
9 general or special, the provisions of this section shall be controlling  
10 as to corporations incorporated or reincorporated hereunder.

11 § 9. Subdivision 2 of section 2 of the public authorities law, as  
12 amended by chapter 257 of the laws of 2011, is amended to read as  
13 follows:

14 2. "local authority" shall mean (a) a public authority or public bene-  
15 fit corporation created by or existing under this chapter or any other  
16 law of the state of New York whose members do not hold a civil office of  
17 the state, are not appointed by the governor or are appointed by the  
18 governor specifically upon the recommendation of the local government or  
19 governments; (b) a not-for-profit corporation, other than a fire corpo-  
20 ration, statewide association of local governments or local officials,  
21 or business improvement district, affiliated with, sponsored by, or  
22 created by a county, city, town or village government; (c) a local  
23 industrial developmental agency or authority or other local public bene-  
24 fit corporation; (d) an affiliate of such local authority; [~~or~~] (e) a  
25 land bank corporation created pursuant to article sixteen of the not-  
26 for-profit corporation law; or (f) a not-for-profit corporation, other  
27 than a fire corporation or statewide association of local governments or  
28 local officials, or business improvement district, that (i) has issued  
29 or has the authority to issue tax exempt debt or (ii) provides state or  
30 municipal tax exemptions through its participation in a project under-  
31 taken in furtherance of its purposes.

32 For the purposes of paragraph (b) of the opening paragraph of this  
33 subdivision, "affiliated with, sponsored by, or created by a county,  
34 city, town or village government" shall also include, but not be limited  
35 to, entities: (a) where one or more individuals who serve as officers  
36 or employees of any county, city, town, village: (i) select either a  
37 majority of the not-for-profit corporation's board of directors or the  
38 not-for-profit corporation's chief executive officer; (ii) constitute a  
39 majority of the voting strength that selects either a majority of the  
40 not-for-profit corporation's board of directors or the corporation's  
41 chief executive officer; or (iii) serve as: (1) a majority of the not-  
42 for-profit corporation's board of directors; or (2) in his or her offi-  
43 cial capacity, the not-for-profit corporation's chief executive officer;  
44 or (3) in his or her official capacity, a director in the not-for-profit  
45 corporation; or (b) which pay staff of a state or local government or  
46 state or local authority to provide administrative or operational  
47 support.

48 § 10. The public authorities law is amended by adding a new section  
49 2829 to read as follows:

50 § 2829. State and local authorities subject to the open meetings and  
51 freedom of information laws. All state and local authorities, as such  
52 terms are defined in section two of this chapter, as well as all subsid-  
53 iaries and affiliates of such state and local authorities, as such terms  
54 are defined in section two of this chapter, shall be subject to the  
55 provisions of articles six and seven of the public officers law relating  
56 to the freedom of information and open meetings laws respectively. All

1 state and local authorities, as well as all subsidiaries and affiliates  
2 of such state and local authorities, shall, to the extent practicable,  
3 stream all open meetings and public hearings on its website in real-  
4 time, post video recordings of all open meetings and public hearings on  
5 its website within five business days of the meeting or hearing and  
6 maintain such recordings for a period of not less than five years.

7 § 11. This act shall take effect on the thirtieth day after it shall  
8 have become a law; provided, however, that the provisions of paragraph  
9 (i) of section 1411 of the not-for-profit corporation law, as amended  
10 pursuant to section eight of this act shall not apply retroactively to  
11 contracts or agreements between a local development corporation and a  
12 municipal corporation, state or local authority, or district entered  
13 into prior to the effective date of this act.