STATE OF NEW YORK

9148

IN SENATE

May 11, 2022

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

AN ACT to amend the New York state urban development corporation act and the economic development law, in relation to establishing a procedure for appointing a president or chairperson upon a vacancy of such position and correcting certain gendered language

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

Section 1. Section 4 of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, subdivisions 1, 1-a and 3 as amended by chapter 280 of the laws of 1984 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, subdivision 2 as amended by chapter 55 of the laws of 1992, subdivision 3-a as added and subdivision 8 as amended by chapter 61 of the laws of 1975, and subdivision 7 as amended by chapter 655 of the laws of 1973, is amended to read as follows:

§ 4. New York state urban development corporation. (1) There is hereby created the New York state urban development corporation. The corporation shall be a corporate governmental agency of the state, constituting a political subdivision and public benefit corporation. Its membership shall consist of nine directors as follows: the superintendent of financial services, the [~~chairman~~] **chairperson** of the New York state science and technology foundation, and seven directors to be appointed by the governor with the advice and consent of the senate. From the seven directors appointed by him **or her**, the governor shall designate the [~~chairman~~] **chairperson** of the corporation and two others who shall all serve at the pleasure of the governor. Of the four remaining directors, one of such directors first appointed by the governor after the effective date of this subdivision as amended shall serve for a term ending January first next succeeding his **or her** appointment, one of such directors shall serve for a term ending one year from such date, one of such directors shall serve for a term ending two years from such date, and one of such directors shall serve for a term ending three years from

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

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such date. Their successors shall serve for terms of four years each. Directors shall continue in office until their successors have been appointed and qualified. In the event of a vacancy occurring in the office of a director by death, resignation or otherwise, the governor shall appoint a successor with the advice and consent of the senate to serve for the balance of the unexpired term. The governor shall appoint the president of the corporation, with the advice and consent of the senate, who shall be the chief executive officer of the corporation and who shall serve at the pleasure of the governor. Such president may **not** be one of the directors appointed by the governor. **In the event of a vacancy occurring in the office of the president or the chairperson by death, resignation or otherwise, the governor shall appoint a successor with the advice and consent of the senate to serve for the balance of the unexpired term. The governor may designate an acting president or chairperson for a period not to exceed six months or until a successor has been confirmed by the senate, whichever comes first.**

(1-a) The superintendent of financial services and the [~~chairman~~] **chairperson** of the New York state science and technology foundation each may designate a person from his **or her** department to represent him **or her** at all meetings of the corporation from which such director may be absent. Any representative so designated shall have the power to attend and to vote at any meeting of the corporation from which the director so designating him **or her** is absent, with the same force and effect as if the director designating him **or her** were present and voting. Such designation shall be by written notice filed with the [~~chairman~~] **chairperson** of the corporation by the director making the designation. The designation of each such person shall continue until revoked at any time by written notice to the [~~chairman~~] **chairperson** by the director making the designation. Such designation shall not limit the power of the director making the designation to attend and vote in person at any meeting of the corporation.

(2) The directors, other than the [~~chairman~~] **chairperson**, shall serve without salary or other compensation, but each director, including the [~~chairman~~] **chairperson**, shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of his or her official duties. Anything to the contrary contained herein notwithstanding, the president of the corporation[~~, whether or not he or she is a director,~~] and the [~~chairman if he or she is not the president~~] **chairperson** shall be entitled to receive such salary as the directors may determine for their services as chief executive officer and [~~chairman~~] **chairperson** respectively.

(3) Such directors other than the superintendent of financial services, the [~~chairman~~] **chairperson** of the New York state science and technology foundation, [~~and any director who serves as president of the corporation~~] may engage in private employment, or in a profession or business. The corporation, its directors, officers and employees shall be subject to the provisions of sections seventy-three and seventy-four of the public officers law.

(3-a) The state shall save harmless and indemnify any person who shall have served as a director, officer or employee of the corporation against financial loss or litigation expense arising in connection with any claim, demand, suit or judgment, or the defense thereof, based on a cause of action, whenever accrued, involving allegations that pecuniary harm was sustained by any person as a result of any transaction of the corporation taking place on or after the effective date of the New York state project finance agency act. In the event any such claim, demand,

suit or judgment shall occur, a director, officer or employee of the corporation shall be saved harmless and indemnified by the state under this subdivision unless such individual is found by a final judicial determination not to have acted in good faith, for a purpose which he **or she** reasonably believed to be in the best interests of the corporation or not to have had reasonable cause to believe that his **or her** conduct was lawful. In any suit described in the first sentence of this subdivision, any director, officer or employee made a party defendant to such suit shall be entitled to be represented by private counsel of his **or her** choice; provided, however, that the attorney general is authorized, as a condition to indemnification of the fees and expenses of such representation, to require that appropriate groups of such individuals be represented by the same counsel; and provided further, that with the approval of the attorney general or of a court (obtained by application substantially as provided in section seven hundred twenty-five of the business corporation law), indemnification for such fees and expenses shall be paid from time to time during the pendency of such suit. The provisions of this subdivision shall be in addition to and shall not supplant any indemnification or other benefits heretofore or hereafter conferred upon directors, officers and employees of the corporation by section seventeen of the public officers law, by action of the corporation, or otherwise. The provisions of this subdivision shall inure only to directors, officers and employees of the corporation, shall not enlarge or diminish the rights of any other party, and shall not impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

(4) The directors of the corporation shall serve ex officio as directors of the corporation for urban development and research of New York, created by the New York state urban development and research corporation act, and of the urban development guarantee fund of New York, created by the urban development guarantee fund of New York act. The [~~chairman~~] **chairperson** of the corporation shall serve as [~~chairman~~] **chairperson** of the corporation for urban development and research of New York and of the urban development guarantee fund of New York.

(5) Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state or of any civil division thereof, shall be deemed to have forfeited or shall forfeit his **or her** office or employment by reason of his **or her** acceptance of membership on the corporation created by this section; provided, however, a director who holds such other public office or employment shall receive no additional compensation or allowance for services rendered pursuant to this act, but shall be entitled to reimbursement for his **or her** actual and necessary expenses incurred in the performance of such services.

(6) The governor shall appoint a business advisory council for urban development, to advise and make recommendations to the corporation with respect to development policies and programs and to encourage maximum participation in projects of the corporation by the private sector of the economy, including members of the council and firms and corporations with which they are [~~affliated~~] **affiliated**. Such council shall consist of not more than twenty-five members, who shall serve at the pleasure of the governor, and who shall be broadly representative of commerce and industry, the financial community and the construction and housing industries. Such members shall serve without salary, but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their duties.

(7) The corporation shall establish one or more community advisory committees to consider and advise the corporation upon matters submitted to them by the corporation concerning the development of any area or any project, and may establish rules and regulations with respect to such committees. The members of such community advisory committees shall serve, at the pleasure of the corporation, without salary, but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their duties. Notwithstanding any inconsistent provision of law, general, special or local, no officer or employee of the state or of any civil division thereof, shall be deemed to have forfeited or shall forfeit his **or her** office or employment by reason of his **or her** acceptance of membership on such community advisory committee.

(8) The governor may remove any director appointed by him **or her** for inefficiency, neglect of duty or misconduct in office after giving him **or her** a copy of the charges against him **or her**, and an opportunity to be heard, in person or by counsel, in his **or her** defense, upon not less than ten days' notice. If any such director shall be removed, the governor shall file in the office of the department of state a complete statement of charges made against such director and his **or her** findings thereon, together with a complete record of the proceeding. The foregoing provisions shall not apply in the case of the [~~chairman~~] **chairperson** and any other director who serves at the pleasure of the governor.

(9) The corporation and its corporate existence shall continue until terminated by law, provided, however, that no such law shall take effect so long as the corporation shall have bonds, notes and other obligations outstanding, unless adequate provision has been made for the payment thereof in the documents securing the same. Upon termination of the existence of the corporation, all its rights and properties shall pass to and be vested in the state.

(10) A majority of the directors of the corporation then in office shall constitute a quorum for the transaction of any business or the exercise of any power or function of the corporation, except as otherwise provided in **subdivision two of** section sixteen[~~, subdivision two, hereof~~] **of this act**. The corporation may delegate to one or more of its directors, or its officers, agents and employees, such powers and duties as it may deem proper.

(11) The corporation shall take affirmative action in working with construction firms, contractors and subcontractors, labor unions and manufacturing and industrial firms, to the end that residents of areas in which projects are to be located shall be afforded participation in the construction work on projects of the corporation, and in the business operations of tenants and occupants of industrial projects undertaken by the corporation.

§ 2. Section 10 of the economic development law, as amended by chapter 839 of the laws of 1987, is amended to read as follows:

§ 10. Department of economic development; commissioner. There shall be in the state government a department of economic development. The head of the department shall be the commissioner of economic development who shall be appointed by the governor, by and with the advice and consent of the senate, and hold office until the end of the term of the governor by whom he **or she** was appointed and until his **or her** successor is appointed and has qualified. The principal office of the department shall be in the city of Albany. Regional offices may be established and maintained by the department in such places as the commissioner may determine and for which appropriations are made by the legislature. The

commissioner may, with the commissioners of general services, transportation and labor, develop and institute a procedure for the uniform collection of employment and economic data within the state for use in connection with the scheduling of public works projects.

§ 3. This act shall take effect immediately.