

STATE OF NEW YORK

828

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. WALLACE -- read once and referred to the Committee on Local Governments

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

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

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called for to implement a state designated urban cultural park management 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

1 expenses, including traveling expenses, incurred in the discharge of
2 their duties.

3 § 3. Section 858 of the general municipal law, as added by chapter
4 1030 of the laws of 1969, the opening paragraph as amended by chapter
5 478 of the laws of 2011, subdivision 4 as amended by chapter 747 of the
6 laws of 2005, subdivision 9 as amended by chapter 444 of the laws of
7 1997, subdivision 8 as amended and subdivision 15 as added by chapter
8 356 of the laws of 1993, and subdivisions 16, 17, and 19 as amended and
9 subdivision 18 as added by chapter 109 of the laws of 2020, is amended
10 to read as follows:

11 § 858. Purposes and powers of the agency. The purposes of the agency
12 shall be to promote, develop, encourage and assist in the acquiring,
13 constructing, reconstructing, improving, maintaining, equipping and
14 furnishing industrial, manufacturing, warehousing, commercial, research
15 and recreation facilities including industrial pollution control facili-
16 ties, educational or cultural facilities, civic facilities, railroad
17 facilities, horse racing facilities, automobile racing facilities and
18 continuing care retirement communities, provided, however, that, of
19 agencies governed by this article, only agencies created for the benefit
20 of a county and the agency created for the benefit of the city of New
21 York shall be authorized to provide financial assistance in any respect
22 to a continuing care retirement community, and thereby advance the job
23 opportunities, health, general prosperity and economic welfare of the
24 people of the state of New York and to improve their recreation opportu-
25 nities, prosperity and standard of living; and to carry out the afore-
26 said purposes, each agency shall have the following powers:

27 (1) To sue and be sued;

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

29 (3) To acquire, hold and dispose of personal property for its corpo-
30 rate purposes;

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

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

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

49 [~~6~~] (7) With the consent of the municipality, to use agents, employ-
50 ees and facilities of the municipality, paying the municipality its
51 agreed proportion of the compensation or costs;

52 [~~7~~] (8) To appoint officers, agents and employees, to prescribe
53 their qualifications and to fix their compensation and to pay the same
54 out of funds of the agency;

55 [~~8~~] (9) (a) To appoint an attorney, who may be the counsel of the
56 municipality, and to fix the attorney's compensation for services which

1 shall be payable to the attorney, and to retain and employ private
2 consultants for professional and technical assistance and advice;

3 (b) An attorney acting as bond counsel for a project must file with
4 the agency a written statement in which the attorney identifies each
5 party to the transaction which such attorney represents. If bond counsel
6 provides any legal services to parties other than the agency the written
7 statement must describe the nature of legal services provided by such
8 bond counsel to all parties to the transaction, including the nature of
9 the services provided to the agency[~~+~~];

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

16 [~~(10)~~] (11) To acquire, construct, reconstruct, lease, improve, main-
17 tain, equip or furnish one or more projects;

18 [~~(11)~~] (12) To accept gifts, grants, loans, or contributions from, and
19 enter into contracts or other transactions with, the United States and
20 the state or any agency of either of them, any municipality, any public
21 or private corporation or any other legal entity, and to use any such
22 gifts, grants, loans or contributions for any of its corporate purposes;

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

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

28 [~~(12)~~] (15) To borrow money and to issue bonds and to provide for the
29 rights of the holders thereof;

30 [~~(13)~~] (16) To grant options to renew any lease with respect to any
31 project or projects and to grant options to buy any project at such
32 price as the agency may deem desirable;

33 [~~(14)~~] (17) To designate the depositories of its money either within
34 or without the state;

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

55 [~~(16)~~] (19) To establish and re-establish its fiscal year;

1 [~~(17)~~] (20) To provide loans to small businesses or not-for-profit
2 corporations as authorized in section eight hundred fifty-nine-c of this
3 title; and

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

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

19 § 4. The general municipal law is amended by adding a new section
20 858-c to read as follows:

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

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

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

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

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

53 § 6. The opening paragraph and subdivisions 1 and 2 of section 859-a
54 of the general municipal law, as added by chapter 356 of the laws of
55 1993, are amended and a new subdivision 3-a is added to read as follows:

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

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

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

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

30 § 7. The general municipal law is amended by adding four new sections
31 859-d, 859-e, 859-f and 859-g to read as follows:

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

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

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

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

1 prior financial assistance provided to the project or to the project
2 applicant.

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

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

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

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

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

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

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

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

28 (c) the purpose of the project;

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

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

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

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

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

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

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

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

55 § 859-f. Recapture of certain financial assistance. 1. The agency,
56 pursuant to the terms and conditions of its financial assistance agree-

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

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

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

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

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

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

53 (b) For the purposes of this subdivision, "competitive advantage"
54 shall include trade secrets that are submitted to an agency by a commer-
55 cial enterprise or derived from information obtained from a commercial
56 enterprise and which if disclosed would cause substantial injury to the

1 competitive position of the subject enterprise. Other factors to be
2 considered in determining whether a trade secret exists include:

3 (i) the extent to which the information is known outside the business;

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

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

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

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

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

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

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

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 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 shall take effect.

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

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

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

§ 206. Financial assistance agreement.

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

2. The agreement shall include the following information:

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

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

(c) the purpose of the project;

(d) the amount, types, sources and commitments of any private financing;

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

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

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

(h) the penalties to be imposed on the project applicant if the terms 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 imated 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.