

STATE OF NEW YORK

4339--B

2021-2022 Regular Sessions

IN SENATE

February 3, 2021

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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

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

11 (2-b) If it is not formed to engage in any activity or for any purpose
12 requiring consent or approval of any state official, department, board,
13 agency or other body, or does not require consent pursuant to subpara-
14 graph (2) or (3) of paragraph (w) of section 404 (Approvals, notices and
15 consents) a statement that no such consent or approval is required. Such
16 statement shall be deemed conclusive for purposes of filing by the
17 department of state. If subsequent to submitting the certificate of
18 incorporation for filing, the corporation plans to engage in any activ-

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

LBD08161-05-2

1 ity requiring consent or approval pursuant to section 404 [~~(approvals)~~
2 (Approvals, notices and consents) of this chapter, the corporation shall
3 obtain such consent or approval and accordingly amend its certificate of
4 incorporation pursuant to article eight of this chapter.

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

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

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

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

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

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

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

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

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

45 (a) Purposes.

46 This section shall provide an additional and alternate method of
47 incorporation or reincorporation of not-for-profit corporations for any
48 of the purposes set forth in this paragraph and shall not be deemed to
49 alter, impair or diminish the purposes, rights, powers or privileges of
50 any corporation heretofore or hereafter incorporated under this section
51 or under the stock or business corporation laws. Corporations may be
52 incorporated or reincorporated under this section as not-for-profit
53 local development corporations operated for the exclusively charitable
54 or public purposes of relieving and reducing unemployment, promoting and
55 providing for additional and maximum employment, bettering and maintain-
56 ing job opportunities, instructing or training individuals to improve or

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

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

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

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

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

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

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

46 Any contract or other agreement between a local development corpo-
47 ration and a municipal corporation, state authority or local authority,
48 or district for one or more of the purposes enumerated in paragraph (a)
49 of this section shall: (1) cause the local development corporation to be
50 defined as a local authority pursuant to subdivision two of section two
51 of the public authorities law; (2) provide for the municipal corpo-
52 ration, state authority or local authority, or district to receive fair
53 and adequate consideration; (3) be subject to the requirements of arti-
54 cle five-A of the general municipal law; and (4) have a term not to
55 exceed twenty-five years, subject to one or more subsequent renewals for
56 a term not to exceed twenty-five years each upon the mutual consent of

1 the parties; provided however that a contract with a municipal corpo-
2 ration shall not be used to finance the municipal corporation's oper-
3 ations or to acquire or improve an asset for use of the municipal corpo-
4 ration.

5 (j) Effect of section.

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

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

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

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

53 § 10. The public authorities law is amended by adding a new section
54 2829 to read as follows:

55 § 2829. State and local authorities subject to the open meetings and
56 freedom of information laws. All state and local authorities, as such

1 terms are defined in section two of this chapter, as well as all subsid-
2 iaries and affiliates of such state and local authorities, as such terms
3 are defined in section two of this chapter, shall be subject to the
4 provisions of articles six and seven of the public officers law relating
5 to the freedom of information and open meetings laws respectively. All
6 state and local authorities, as well as all subsidiaries and affiliates
7 of such state and local authorities, shall, to the extent practicable,
8 stream all open meetings and public hearings on its website in real-
9 time, post video recordings of all open meetings and public hearings on
10 its website within five business days of the meeting or hearing and
11 maintain such recordings for a period of not less than five years.

12 § 11. This act shall take effect on the thirtieth day after it shall
13 have become a law; provided, however, that the provisions of subpara-
14 graph 2 of paragraph (d) and paragraph (i) of section 1411 of the not-
15 for-profit corporation law, as amended by sections six and eight of this
16 act shall not apply retroactively to contracts or agreements between a
17 local development corporation and a municipal corporation, state or
18 local authority, or district entered into prior to the effective date of
19 this act.