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:

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

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

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

(2-b) If it is not formed to engage in any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, **or does not require consent pursuant to subparagraph (2) or (3) of paragraph (w) of section 404 (Approvals, notices and consents)** a statement that no such consent or approval is required. Such statement shall be deemed conclusive for purposes of filing by the department of state. If subsequent to submitting the certificate of 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.

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

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

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

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

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

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

(2) indicates that one or more individuals who serve as officers or employees of any municipal corporation, state or local authority, or district shall: (i) select either a majority of the corporation's board of directors or the corporation's chief executive officer; (ii) constitute a majority of the voting strength that selects either a majority of the corporation's board of directors or the corporation's chief executive officer; or (iii) serve as: (A) a majority of the corporation's board of directors; or (B) in his or her official capacity, the corporation's chief executive officer; or (C) in his or her official capacity, a director in the corporation; or

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

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

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

(a) Purposes.

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

develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest, and any one or more counties, cities, towns or villages of the state, or any combination thereof, or the New York job development authority in exercising its power under the public authorities law to encourage the organization of local development corporations, may cause such corporations to be incorporated by public officers or private individuals or reincorporated upon compliance with the requirements of this section, and it is hereby found, determined and declared that in carrying out said purposes and in exercising the powers conferred by paragraph (b) such corporations will be performing an essential governmental function. **A not-for-profit corporation may not incorporate or reincorporate under this section if its sole corporate purpose is for lessening the burdens of government and acting in the public interest.**

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

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

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

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

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

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

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

the parties; provided however that a contract with a municipal corporation shall not be used to finance the municipal corporation's operations or to acquire or improve an asset for use of the municipal corporation.

(j) Effect of section.

Corporations incorporated or reincorporated under this section shall be organized and operated exclusively for the purposes set forth in paragraph (a) of this section, shall have, in addition to the powers otherwise conferred by law, the powers conferred by paragraph (c) of this section and shall be subject to all the restrictions [~~and~~], limitations and obligations imposed by [~~paragraph~~] paragraphs (e) [~~and paragraph~~], (g) and (i) of this section. In so far as the provisions of this section are inconsistent with the provisions of any other law, general or special, the provisions of this section shall be controlling as to corporations incorporated or reincorporated hereunder.

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

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

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

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

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

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

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