STATE OF NEW YORK

3069

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

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

AN ACT to amend the general municipal law, in relation to establishing regional industrial development agencies; and to repeal certain provisions of such law relating thereto

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

Section 1. Section 856 of the general municipal law, as added by chapter 1030 of the laws of 1969, paragraph (c) of subdivision 1 as added by chapter 692 of the laws of 1989 and subdivision 2 as amended by chapter 356 of the laws of 1993, is amended to read as follows:

§ 856. [~~Organization~~] **Establishment and organization** of **regional** industrial development agencies. 1. (a) [~~Upon the establishment of an industrial development agency by special act of the legislature, the governing body of the municipality for whose benefit such agency is established shall file within six months after the effective date of the special act of the legislature establishing such agency or before the first day of July, nineteen hundred sixty-nine, whichever date shall be later, in the office of the secretary of state, a certificate setting forth: (1) the date of passage of the special act establishing the agency; (2) the name of the agency; (3) the names of the members and their terms of office, specifying which member is the chairman; and (4) facts establishing the need for the establishment of an agency in such municipality.~~

~~(b) Every such agency shall be perpetual in duration, except that if (1) such certificate is not filed with the secretary of state within six months after the effective date of the special act of the legislature establishing such agency or before the first day of July, nineteen hundred sixty-nine, whichever date shall be later, or if (2) at the expiration of ten years subsequent to the effective date of the special act, there shall be outstanding no bonds or other obligations thereto-~~

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

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~~fore issued by such agency or by the municipality for or in behalf of the agency, then the corporate existence of such agency shall thereupon terminate and it shall thereupon be deemed to be and shall be dissolved.~~

~~(c) On or before March first of each year, the secretary of state shall prepare a list of agencies which failed to file a certificate in accordance with provisions of paragraph (a) of this subdivision within the preceding calendar year and transmit a copy of such list to the state comptroller and the commissioner of the department of economic development. On or before March first of each year the commissioner of the department of economic development shall prepare a list of agencies which have dissolved pursuant to paragraph (b) of this subdivision or have ceased to exist pursuant to section eight hundred eighty-two of this chapter and shall transmit a copy of such list to the state comptroller.~~] There is hereby established ten regional industrial development agencies, one for each of the following regions of the state:

(i) Long Island (which consists of Suffolk and Nassau counties);

(ii) the city of New York (which consists of Bronx, New York, Queens, Brooklyn, and Richmond counties);

(iii) the Mid-Hudson region (which consists of Sullivan, Ulster, Dutchess, Orange, Putnam, Westchester, and Rockland counties);

(iv) the Southern tier (which consists of Steuben, Schuyler, Tompkins, Chemung, Tioga, Chenango, Broome, and Delaware counties);

(v) the Capital region (which consists of Warren, Washington, Saratoga, Schenectady, Rensselaer, Albany, Columbia, and Greene counties);

(vi) the Mohawk valley (which consists of Oneida, Herkimer, Fulton, Montgomery, Otsego, and Schoharie counties);

(vii) the North country (which consists of Clinton, Franklin, St. Lawrence, Jefferson, Lewis, Hamilton, and Essex counties);

(viii) the Central region (which consists of Oswego, Cayuga, Onondaga, Madison, and Cortland counties);

(ix) the Finger Lakes region (which consists of Orleans, Monroe, Wayne, Genesee, Wyoming, Livingston, Ontario, Seneca, and Yates counties); and

(x) the Western region (which consists of Niagara, Erie, Chautauqua, Cattaraugus, and Allegany counties).

(b) Any municipal industrial development agency established under the former title two of this article shall consolidate into the regional entity where such municipal industrial development agency was located.

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 nor more than seven~~] fifteen members who shall be appointed by the governing body of each [~~municipality and who~~] county within the agency in proportion to the population within that regional jurisdiction of that agency, provided that each county should be entitled to at least one member. A member 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 or her successor is appointed and has qualified. The [~~governing body of each municipality~~] appointed members 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 expenses, including traveling expenses, incurred in the discharge of their duties.

3. A majority of the members of an agency shall constitute a quorum.

4. Any one or more of the members of an agency may be an official or an employee of [~~the~~] a municipality in a county under the jurisdiction of the agency. In the event that an official or an employee of the municipality shall be appointed as a member of the agency, acceptance or retention of such appointment shall not be deemed a forfeiture of his or her municipal office or employment, or incompatible therewith or affect his or her tenure or compensation in any way. [~~The term of office of a member of an agency who is an official or an employee of the municipality when appointed as a member thereof by special act of the legislature creating the industrial development agency shall terminate at the expiration of the term of his municipal office.~~]

§ 2. Subdivisions 1, 4 and 11 of section 854 of the general municipal law, subdivision 1 as added by chapter 1030 of the laws of 1969, subdivision 4 as amended by section 5 of part X of chapter 59 of the laws of 2021 and subdivision 11 as added by chapter 803 of the laws of 1980, are amended to read as follows:

(1) "Agency" or "IDA"--shall mean [~~an Industrial Development Agency created pursuant to this act~~] the regional industrial development agency established in each region of the state, pursuant to subdivision one of section eight hundred fifty-six of this title.

(4) "Project" - shall mean any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the [~~municipality~~] region for whose benefit the agency was created, including, but not limited to, machinery, equipment and other facilities deemed necessary or desirable in connection therewith, or incidental thereto, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, renewable energy or industrial purposes or other economically sound purposes identified and 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 renewable energy project 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~~] region 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 and the corresponding agency for such region, or is to be, located, and such portion of the project located outside such [~~municipality~~] region for whose benefit the agency was created shall be contiguous with the portion of the project inside such [~~municipality~~] region.

(11) "Railroad facility"--shall mean, but shall not be limited to, railroad rights-of-way, beds, bridges, viaducts, tracks, switches and rolling stock and any other attendant structure, equipment, facility or property necessary or appropriate to railroading conducted in conjunction with industrial, [~~commerical~~] commercial, manufacturing, recreational or warehousing operations; provided, however, that (i) no agency shall itself operate a railroad facility for freight or passenger service, but may lease or otherwise make such facility available to an operator, subject to an agreement for the maintenance and operation of such facility for freight or passenger service, provided that passenger service does not constitute the primary purpose of the railroad facility; (ii) prior to undertaking any project involving acquisition,

construction, reconstruction, improvement, maintenance, equipping or furnishing of a railroad facility, an agency shall submit its plans for the proposed project to the commissioner of transportation; the commissioner shall, within sixty days of his **or her** receipt of the proposal, submit an analysis of the financial and operational feasibility of the proposed project, along with any recommendations for modification for improving the project's viability, to the agency, the governor, the commissioner of commerce, the temporary president of the senate, the speaker of the assembly and the governing body of the municipality in which the [~~agency~~] **proposed project** is located; and (iii) no agency shall enter into any contract for the acquisition, construction, reconstruction, improvement, maintenance, equipping or furnishing of a railroad facility until fifteen days after the submission of the analysis and recommendations of the commissioner of transportation, or seventy-five days after submission of the agency's plan to the commissioner, whichever is earlier.

§ 3. The opening paragraph and subdivisions 6, 7 and 8 of section 858 of the general municipal law, the opening paragraph as amended by section 6 of part X of chapter 59 of the laws of 2021, subdivision 6 as added by chapter 1030 of the laws of 1969, subdivision 7 as amended by chapter 559 of the laws of 2021 and subdivision 8 as amended by chapter 356 of the laws of 1993, are amended to read as follows:

The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research, renewable energy and recreation facilities including industrial pollution control facilities, educational or cultural facilities, railroad facilities, horse racing facilities, automobile racing facilities, renewable energy projects and continuing care retirement communities, [~~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 of the city of New York shall be authorized to provide financial assistance in any respect to a continuing care retirement community,~~] and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the state of New York and to improve their recreation opportunities, prosperity and standard of living; and to carry out the aforesaid purposes, each agency shall have the following powers:

(6) With the consent of [~~the~~] **a** municipality **under the jurisdiction of the agency**, to use agents, employees and facilities of the municipality, paying the municipality its agreed proportion of the compensation or costs;

(7) To appoint officers, agents and employees, to prescribe their qualifications and to fix their compensation and to pay the same out of funds of the agency, provided, however, that an elected officer of [~~the~~] **a** municipality **under the jurisdiction of the agency** may not serve as a compensated officer, agent or employee of the agency;

(8) (a) To appoint an attorney, who may be the counsel of [~~the~~] **a** municipality **under the jurisdiction of the agency**, and to fix the attorney's compensation for services which shall be payable to the attorney, and to retain and employ private consultants for professional and technical assistance and advice;

(b) An attorney acting as bond counsel for a project must file with the agency a written statement in which the attorney identifies each party to the transaction which such attorney represents. If bond counsel provides any legal services to parties other than the agency the written

statement must describe the nature of legal services provided by such bond counsel to all parties to the transaction, including the nature of the services provided to the agency.

§ 4. Paragraphs (b) and (e) of subdivision 1 and subdivisions 2 and 3 of section 859 of the general municipal law, paragraph (b), the opening paragraph of paragraph (e) and subparagraph (v) of paragraph (e) of subdivision 1 as amended by chapter 357 of the laws of 1993, paragraph (e) of subdivision 1 and subdivision 3 as added and subdivision 2 as amended by chapter 356 of the laws of 1993, are amended to read as follows:

(b) Within ninety days following the close of its fiscal year, each agency [~~or authority~~] shall prepare a financial statement for that fiscal year in such form as may be prescribed by the state comptroller. Such statement shall be audited within such [~~ninety day~~] **ninety-day** period by an independent certified public accountant in accordance with government accounting standards established by the United States general accounting office. The audited financial statement shall include supplemental schedules listing all straight-lease transactions and bonds and notes issued, outstanding or retired during the applicable accounting period whether or not such bonds, notes or transactions are considered obligations of the agency. For each issue of bonds or notes such schedules shall provide the name of each project financed with proceeds of each issue, and whether the project occupant is a not-for-profit corporation, the name and address of each owner of each project, the estimated amount of tax exemptions authorized for each project, the purpose for which each bond or note was issued, date of issue, interest rate at issuance and if variable the range of interest rates applicable, maturity date, federal tax status of each issue, and an estimate of the number of jobs created and retained by each project. For each straight-lease transaction, such schedules shall provide the name of each project, and whether the project occupant is a not-for-profit corporation, the name and address of each owner of each project, the estimated amount of tax exemptions authorized for each project, the purpose for which each transaction was made, the method of financial assistance utilized by the project, other than the tax exemptions claimed by the project and an estimate of the number of jobs created and retained by each project.

(e) If an agency [~~or authority~~] shall fail to file or substantially complete, as determined by the state comptroller, the financial statement required by this section, the state comptroller shall provide notice to the agency [~~or authority~~]. The notice shall state the following:

(i) that the failure to file a financial statement as required is a violation of this section, or in the case of an insufficient financial statement, the manner in which the financial statement submitted is deficient;

(ii) that the agency [~~or authority~~] has thirty days to comply with this section or provide an adequate written explanation to the comptroller of the agency's [~~or authority's~~] reasons for the inability to comply; and

(iii) that the agency's [~~or authority's~~] failure to provide either the required financial statement or an adequate explanation will result in the notification [~~of the chief executive officer of the municipality for whose benefit the agency or authority was created~~] of [~~the~~] **such** agency's noncompliance with this section. Where such agency [~~or authority~~] has failed to file the required statement, the comptroller shall additionally notify the agency [~~or authority~~] that continued failure to file

the required statement may result in loss of the agency's [~~or authority's~~] authority to provide exemptions from state taxes.

(iv) If an agency [~~or authority~~] after thirty days has failed to file the required statement or the explanation in the manner required by subparagraph (i) of this paragraph, or provides an insufficient explanation, the comptroller shall notify the [~~chief executive officer of the municipality for whose benefit the agency or authority was created and the~~] agency of [~~the~~] such agency's [~~or authority's~~] noncompliance with this section. Such notice from the state comptroller shall further delineate in what respect the agency [~~or authority~~] has failed to comply with this section. If the agency [~~or authority~~] has failed to file the required statement, the notice shall additionally state that continued failure to file the required statement may result in loss of the agency's [~~or authority's~~] authority to provide exemptions from state taxes.

(v) If, thirty days after notification of the [~~chief executive officer of the municipality for whose benefit the agency or authority was created of the~~] agency's [~~or authority's~~] noncompliance, the agency [~~or authority~~] fails to file the required statement, the comptroller shall notify the [~~chief executive officer of the municipality for whose benefit that agency or authority was created and the~~] agency [~~or authority~~] that if such report is not provided within sixty days, that the agency [~~or authority~~] will no longer be authorized to provide exemptions from state taxes.

(vi) If, sixty days after the notification required by subparagraph (v) of this paragraph, the comptroller has not received the required statement, the agency [~~or authority~~] shall not offer financial assistance which provides exemptions from state taxes until such financial statement is filed and the comptroller shall so notify the agency [~~or authority and the chief executive officer of the municipality for whose benefit the agency was created~~]. Provided, however, that nothing contained in this paragraph shall be deemed to modify the terms of any existing agreements.

2. On or before September first of each year, the commissioner of the department of economic development shall prepare and submit to the governor, speaker of the assembly, majority leader of the senate, and the state comptroller, a report setting forth a summary of the significant trends in operations and financing by the agencies [~~and authorities~~]; departures from acceptable practices by agencies [~~and authorities~~]; a compilation by type of the bonds and notes outstanding; a compilation of all outstanding straight-lease transactions; an estimate of the total number of jobs created and retained by agency [~~or authority~~] projects; and any other information which in the opinion of the commissioner bears upon the discharge of the statutory functions of agencies [~~and authorities~~].

3. On or before April first, nineteen hundred ninety-six, the commissioner shall submit to the director of the division of the budget, the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee, the chairman of the assembly ways and means committee, the chairman of the senate local government committee, the chairman of the senate committee on commerce, economic development and small business, the chairman of the assembly committee on commerce, industry and economic development, the chairman of the assembly local governments committee and the chairman of the assembly real property taxation committee an evaluation of the activities of industrial development agencies [~~and authorities~~] in the state prepared by an entity independent of the department. Such evaluation shall iden-

tify the effect of agencies [~~and authorities~~] on: (a) job creation and retention in the state, including the types of jobs created and retained; (b) the value of tax exemptions provided by such agencies [~~and authorities~~]; (c) the value of payments received in lieu of taxes received by municipalities and school districts as a result of projects sponsored by such entities; (d) a summary of the types of projects that received financial assistance; (e) a summary of the types of financial assistance provided by the agencies [~~and authorities~~]; (f) a summary of criteria for evaluation of projects used by agencies [~~and authorities~~]; (g) a summary of tax exemption policies of agencies [~~and authorities~~]; and (h) such other factors as may be relevant to an assessment of the performance of such agencies [~~and authorities~~] in creating and retaining job opportunities for residents of the state. Such evaluation shall also assess the process by which **the** agencies [~~and authorities~~] grant exemptions from state taxes and make recommendations for the most efficient and effective procedures for the use of such exemptions. Such evaluation shall further include any recommendations for changes in laws governing the operations of industrial development agencies [~~and authorities~~] which would enhance the creation and retention of jobs in the state.

§ 5. Paragraph (c) of subdivision 2 of section 862 of the general municipal law, as added by section 1 of part J of chapter 59 of the laws of 2013, is amended to read as follows:

(c) With respect to projects authorized pursuant to paragraph (b) of this subdivision, no project shall be approved unless the agency shall find after the public hearing required by section eight hundred fifty-nine-a of this title that undertaking the project will serve the public purposes of this article by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state. [~~Where the agency makes such a finding, prior to providing financial assistance to the project by the agency, the chief executive officer of the municipality for whose benefit the agency was created shall confirm the proposed action of the agency.~~]

§ 6. Section 868 of the general municipal law, as added by chapter 1030 of the laws of 1969, is amended to read as follows:

§ 868. Agreements of the municipality and state. The municipality **where a proposed project is located** is authorized to, and the state does hereby, pledge to and agree with the holders of the bonds or notes that neither the municipality nor the state, respectively, will limit or alter the rights, hereby vested in the agency to acquire, construct, reconstruct, improve, maintain, equip and furnish the project or projects, to establish and collect rentals, fees and other charges and to fulfill the terms of any agreements made with the holders of the bonds or notes nor in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders or noteholders are fully met and discharged.

§ 7. Section 870 of the general municipal law, as added by chapter 1030 of the laws of 1969, is amended to read as follows:

§ 870. State and municipality not liable on bonds or notes. The bonds or notes and other obligations of the [~~authority~~] **agency** shall not be a debt of the state or of the municipality **where a proposed project is located**, and neither the state nor the municipality shall be liable

thereon, nor shall they be payable out of any funds other than those of the agency.

§ 8. Subdivision 1 and paragraph (d) of subdivision 3 of section 875 of the general municipal law, as added by section 2 of part J of chapter 59 of the laws of 2013, are amended to read as follows:

1. For purposes of this section: "state sales and use taxes" means sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight. "IDA" means [~~an~~] **a regional** industrial development agency established **in each region of the state** by **subdivision one of section eight hundred fifty-six of** this [~~article or an industrial development authority created by the public authorities law~~] **title**. "Commissioner" means the commissioner of taxation and finance.

(d) An IDA shall prepare an annual compliance report detailing its terms and conditions described in paragraph (a) of this subdivision and its activities and efforts to recover, recapture, receive, or otherwise obtain state sales and use exemptions benefits described in paragraph (b) of this subdivision, together with such other information as the commissioner and the commissioner of economic development may require. The report required by this subdivision shall be filed with the commissioner, the director of the division of the budget, the commissioner of economic development, the state comptroller, [~~the governing body of the municipality for whose benefit the agency was created,~~] and may be included with the annual financial statement required by paragraph (b) of subdivision one of section eight hundred fifty-nine of this title. Such report required by this subdivision shall be filed regardless of whether the IDA is required to file such financial statement described by such paragraph (b) of subdivision one of section eight hundred fifty-nine. The failure to file or substantially complete the report required by this subdivision shall be deemed to be the failure to file or substantially complete the statement required by such paragraph (b) of subdivision one of such section eight hundred fifty-nine, and the consequences shall be the same as provided in paragraph (e) of subdivision one of such section eight hundred fifty-nine.

§ 9. Section 861 of the general municipal law is REPEALED.

§ 10. Section 882 of the general municipal law is REPEALED.

§ 11. Title 2 of article 18-A of the general municipal law is REPEALED.

§ 12. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.