

# STATE OF NEW YORK

3715--B

Cal. No. 95

2023-2024 Regular Sessions

## IN ASSEMBLY

February 7, 2023

Introduced by M. of A. PAULIN, OTIS, FAHY, JACOBSON, McDONALD -- read once and referred to the Committee on Corporations, Authorities and Commissions -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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 such incorporator is filing said certificate on the behalf or at the  
7 behest of a municipal corporation, state or local authority, or  
8 district.

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

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

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

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1 consent or approval pursuant to section 404 [~~approvals~~] (Approvals,  
2 notices and consents) of this [~~chapter~~] article, 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) indicates that one or more individuals who serve as officers or  
17 employees of any municipal corporation, state or local authority, or  
18 district shall: (i) select either a majority of the corporation's board  
19 of directors or the corporation's chief executive officer; (ii) consti-  
20 tute a majority of the voting strength that selects either a majority of  
21 the corporation's board of directors or the corporation's chief execu-  
22 tive officer; or (iii) serve as: (A) a majority of the corporation's  
23 board of directors; or (B) in their official capacity, the corporation's  
24 chief executive officer; or

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

28 The director shall make such inquiry into the purposes of the proposed  
29 corporation as the director shall deem advisable.

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

33 (a) Purposes.

34 This section shall provide an additional and alternate method of  
35 incorporation or reincorporation of not-for-profit corporations for any  
36 of the purposes set forth in this paragraph and shall not be deemed to  
37 alter, impair or diminish the purposes, rights, powers or privileges of  
38 any corporation heretofore or hereafter incorporated under this section  
39 or under the stock or business corporation laws. Corporations may be  
40 incorporated or reincorporated under this section as not-for-profit  
41 local development corporations operated for the exclusively charitable  
42 or public purposes of relieving and reducing unemployment, promoting and  
43 providing for additional and maximum employment, bettering and maintain-  
44 ing job opportunities, instructing or training individuals to improve or  
45 develop their capabilities for such jobs, carrying on scientific  
46 research for the purpose of aiding a community or geographical area by  
47 attracting new industry to the community or area or by encouraging the  
48 development of, or retention of, an industry in the community or area,  
49 and lessening the burdens of government and acting in the public inter-  
50 est, and any one or more counties, cities, towns or villages of the  
51 state, or any combination thereof, or the New York job development  
52 authority in exercising its power under the public authorities law to  
53 encourage the organization of local development corporations, may cause  
54 such corporations to be incorporated by public officers or private indi-  
55 viduals or reincorporated upon compliance with the requirements of this  
56 section, and it is hereby found, determined and declared that in carry-

ing 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~~[7]~~ (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

1 this section are inconsistent with the provisions of any other law,  
2 general or special, the provisions of this section shall be controlling  
3 as to corporations incorporated or reincorporated hereunder.

4 § 9. Subdivisions 1 and 2 of section 2 of the public authorities law,  
5 as added by chapter 766 of the laws of 2005 and subdivision 2 as amended  
6 by chapter 257 of the laws of 2011, are amended to read as follows:

7 1. "state authority" shall mean (a) a public authority or public bene-  
8 fit corporation created by or existing under this chapter or any other  
9 law of the state of New York, with one or more of its members appointed  
10 by the governor or who serve as members by virtue of holding a civil  
11 office of the state, other than an interstate or international authority  
12 or public benefit corporation, including subsidiaries of such public  
13 authority or public benefit corporation; or (b) certain membership  
14 corporations as defined in paragraph (d) of subdivision five of section  
15 fifty-three-a of the state finance law.

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

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

48 § 10. Section 2829 of the public authorities law, as added by section  
49 1 of subpart B of part SS of chapter 58 of the laws of 2024, is amended  
50 to read as follows:

51 § 2829. State and local authorities subject to the open meetings and  
52 freedom of information laws. All state and local authorities, as such  
53 terms are defined in section two of this chapter, as well as all subsid-  
54 iaries and affiliates of such state and local authorities, as such terms  
55 are defined in section two of this chapter, shall be subject to the  
56 provisions of articles six and seven of the public officers law relating

1 to the freedom of information and open meetings laws respectively. All  
2 state and local authorities, as well as all subsidiaries and affiliates  
3 of such state and local authorities, shall, to the extent practicable,  
4 stream all open meetings and public hearings on their website in real-  
5 time, post video recordings of all open meetings and public hearings on  
6 their website within five business days of the meeting or hearing and  
7 maintain such recordings for a period of not less than five years.

8 § 11. This act shall take effect on the thirtieth day after it shall  
9 have become a law; provided, however, that the provisions of subpara-  
10 graph 2 of paragraph (d) and paragraph (i) of section 1411 of the not-  
11 for-profit corporation law, as amended by sections six and eight of this  
12 act shall not apply retroactively to contracts or agreements between a  
13 local development corporation and a municipal corporation, state or  
14 local authority, or district entered into prior to the effective date of  
15 this act; and provided, further, that if section one of subpart B of  
16 part SS of chapter 58 of the laws of 2024 shall not have taken effect on  
17 or before such date then section ten of this act shall take effect on  
18 the same date and in the same manner as such chapter of the laws of 2024  
19 takes effect.