

STATE OF NEW YORK

3715--C

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 -- again amended on third reading, 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

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

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

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

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

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

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

17 (1) indicates that one or more individuals who serve as officers or
18 employees of any municipal corporation, state or local authority, or
19 district shall: (i) select either a majority of the corporation's board
20 of directors or the corporation's chief executive officer; (ii) consti-
21 tute a majority of the voting strength that selects either a majority of
22 the corporation's board of directors or the corporation's chief execu-
23 tive officer; or (iii) serve as: (A) a majority of the corporation's
24 board of directors; or (B) in their official capacity, the corporation's
25 chief executive officer; or

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

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

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

34 (a) Purposes.

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

1 section, and it is hereby found, determined and declared that in carry-
2 ing out said purposes and in exercising the powers conferred by para-
3 graph (b) such corporations will be performing an essential governmental
4 function. A not-for-profit corporation may not incorporate or reincorporate
5 under this section if its sole corporate purpose is for lessening
6 the burdens of government and acting in the public interest.

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

9 (2) Notwithstanding the provisions of any general, special or local
10 law, charter or ordinance to the contrary, such sale or lease may be
11 made without appraisal (except as may be necessary in regard to subpara-
12 graph (4) of this paragraph), public notice[7] (except as provided in
13 subparagraph (4) of this paragraph), or public bidding for such price or
14 rental and upon such terms as may be agreed upon between the county,
15 city, town or village and said local development corporation; provided,
16 however, that in case of a lease the term may not exceed [~~ninety-nine~~
17 twenty-five] years and provided, further, that in cities having a popu-
18 lation of one million or more, no such sale or lease shall be made with-
19 out the approval of a majority of the members of the borough improvement
20 board of the borough in which such real property is located.

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

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

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

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

35 Any contract or other agreement between a local development corpo-
36 ration and a municipal corporation, state authority or local authority,
37 or district for one or more of the purposes enumerated in paragraph (a)
38 of this section shall: (1) cause the local development corporation to be
39 defined as a local authority pursuant to subdivision two of section two
40 of the public authorities law; (2) provide for the municipal corpo-
41 ration, state authority or local authority, or district to receive fair
42 and adequate consideration; (3) be subject to the requirements of arti-
43 cle five-A of the general municipal law; and (4) have a term not to
44 exceed twenty-five years, subject to one or more subsequent renewals for
45 a term not to exceed twenty-five years each upon the mutual consent of
46 the parties; provided however that a contract with a municipal corpo-
47 ration shall not be used to finance the municipal corporation's oper-
48 ations or to acquire or improve an asset for use of the municipal corpo-
49 ration.

50 (j) Effect of section.

51 Corporations incorporated or reincorporated under this section shall
52 be organized and operated exclusively for the purposes set forth in
53 paragraph (a) of this section, shall have, in addition to the powers
54 otherwise conferred by law, the powers conferred by paragraph (c) of
55 this section and shall be subject to all the restrictions [~~and~~], limita-
56 tions and obligations imposed by [~~paragraph~~] paragraphs (e) [~~and para-~~

1 ~~graph~~, (g) and (i) of this section. In so far as the provisions of
2 this section are inconsistent with the provisions of any other law,
3 general or special, the provisions of this section shall be controlling
4 as to corporations incorporated or reincorporated hereunder.

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

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

17 2. "local authority" shall mean (a) a public authority or public bene-
18 fit corporation created by or existing under this chapter or any other
19 law of the state of New York whose members do not hold a civil office of
20 the state, are not appointed by the governor or are appointed by the
21 governor specifically upon the recommendation of the local government or
22 governments; (b) a not-for-profit corporation, other than a fire corpo-
23 ration, a public group self-insurer regulated under the workers' compen-
24 sation law, statewide association of local governments or local offi-
25 cial, or business improvement district, affiliated with, sponsored by,
26 or created by a county, city, town or village government; (c) a local
27 industrial developmental agency or authority or other local public bene-
28 fit corporation; (d) an affiliate of such local authority; ~~[ex]~~ (e) a
29 land bank corporation created pursuant to article sixteen of the not-
30 for-profit corporation law; or (f) a not-for-profit corporation, other
31 than a fire corporation, a public group self-insurer regulated under the
32 workers' compensation law or statewide association of local governments
33 or local officials, or business improvement district, that (i) has
34 issued or has the authority to issue tax exempt debt or (ii) provides
35 state or municipal tax exemptions through its participation in a project
36 undertaken 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 their official
48 capacity, the not-for-profit corporation's chief executive officer; or
49 (b) which pay staff of a state or local government or state or local
50 authority to provide administrative or operational support.

51 § 10. Section 2829 of the public authorities law, as added by section
52 1 of subpart B of part SS of chapter 58 of the laws of 2024, is amended
53 to read as follows:

54 § 2829. State and local authorities subject to the open meetings and
55 freedom of information laws. All state and local authorities, as such
56 terms are defined in section two of this chapter, as well as all subsid-

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

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