STATE OF NEW YORK

1719

2023-2024 Regular Sessions

IN SENATE

January 13, 2023

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law and the public authorities law, in relation to the purposes and powers of industrial development agencies and to improve the accountability and transparency of such agencies; to amend the public authorities law, in relation to extending the bond issuance charge to the debt issued by not-for-profit corporations acting on behalf of the state or its political subdivisions; to amend the not-for-profit corporation law, in relation to the purposes and powers of local development corporations and certain other not-for-profit corporations thereof; and to repeal subdivision 3 of section 859 of the general municipal law relating to an evaluation of the activities of industrial development agencies and authorities in the state prepared by an entity independent of the department

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

Section 1. Subdivisions 4 and 14 of section 854 of the general municipal law, subdivision 4 as amended by section 5 of part X of chapter 59 of the laws of 2021 and subdivision 14 as added by chapter 356 of the laws of 1993, are amended and a new subdivision 22 is added to read as follows:

(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 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, *civic,* commercial, renewable energy or industrial purposes or other economically sound purposes identified and called for to implement a state designated urban

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

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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**, a continuing care retirement community, or a civic facility, 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 for the city of New York shall provide financial assistance in any respect to a continuing care retirement community,** 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 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, or is to be, located, and such portion of the project located outside such municipality for whose benefit the agency was created shall be contiguous with the portion of the project inside such municipality. **Provided further, however, that no agency shall provide financial assistance for any project where the project applicant has any agreement to subsequently contract with a municipality for the lease or purchase of such project or project facility.**

(14) "Financial assistance" - shall mean the proceeds of bonds issued by an agency, straight-leases, **grants, loans,** or exemptions from taxation claimed by a project occupant as a result of an agency taking title, possession or control (by lease, license or otherwise) to the property or equipment of such project occupant or of such project occupant acting as an agent of an agency.

(22) "Civic facility" shall mean a facility to be owned or occupied by a municipal corporation, a district corporation, or a not-for-profit corporation organized and existing under the laws of this state or authorized to conduct activities in this state; provided that such facilities shall be limited to medical facilities including those defined in article twenty-eight of the public health law, educational facilities, recreational facilities for public use, facilities used for municipal government or public safety purposes, or housing facilities primarily designed to be occupied by individuals sixty years of age or older. Nothing in this article shall be deemed to waive any applicable requirement for an operating facility certificate, consent or other approval as provided by law.

§ 2. Subdivision 2 of section 856 of the general municipal law, as amended by chapter 356 of the laws of 1993, is amended to read as follows:

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~~] **five** nor more than seven members who shall be appointed by the governing body of each municipality and who 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 successor is appointed and has qualified. The governing body of each municipality 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. Section 858 of the general municipal law, as added by chapter 1030 of the laws of 1969, the opening paragraph as amended by section 6 of part X of chapter 59 of the laws of 2021, subdivision 4 as amended by chapter 747 of the laws of 2005, subdivision 7 as amended by chapter 559 of the laws of 2021, subdivision 8 as amended and subdivision 15 as added by chapter 356 of the laws of 1993, subdivision 9 as amended by chapter 444 of the laws of 1997, and subdivisions 16 and 17 as renumbered by chapter 356 of the laws of 1993, is amended to read as follows:

§ 858. Purposes and powers of the agency. 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, **civic 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:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold and dispose of personal property for its corporate purposes;

(4) To acquire by purchase, grant, lease, gift, pursuant to the provisions of the eminent domain procedure law, or otherwise and to use, real property or rights or easements therein necessary for its corporate purposes in compliance with the local zoning and planning regulations and shall take into consideration regional and local comprehensive land use plans and state designated heritage area management plans, and to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of any such property in such manner as the agency shall determine. In the case of railroad facilities, however, the phrase to use real property or rights or easements therein shall not be interpreted to include operation by the agency of rail service upon or in conjunction with such facilities[~~.~~]**;**

(5) **To acquire real property from a municipality as necessary for its corporate purposes pursuant to section eight hundred fifty-eight-c of this title;**

(6) To make by-laws for the management and regulation of its affairs and, subject to agreements with its bondholders, for the regulation of the use of a project or projects[~~.~~]**;**

[~~(6)~~] **(7)** With the consent of the municipality, to use agents, employees and facilities of the municipality, paying the municipality its agreed proportion of the compensation or costs;

[~~(7)~~] **(8)** 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 municipality may not serve as a compensated officer, agent or employee of the agency;

[~~(8)~~] **(9)** (a) To appoint an attorney, who may be the counsel of the municipality, 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[~~.~~]**;**

[~~(9)~~] **(10)** To make contracts and leases, and to execute all instruments necessary or convenient to or with any person, firm, partnership or corporation, either public or private; provided, however, that any extension of an existing contract, lease or other agreement entered into by an agency with respect to a project shall be guided by the provisions of this article;

[~~(10)~~] **(11)** To acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects;

[~~(11)~~] **(12)** To accept gifts, grants, loans, or contributions from, and enter into contracts or other transactions with, the United States and the state or any agency of either of them, any municipality, any public or private corporation or any other legal entity, and to use any such gifts, grants, loans or contributions for any of its corporate purposes;

[~~(12)~~] **(13) To provide financial assistance in the form of loans to improve, maintain or equip one or more projects consistent with its corporate purposes;**

(14) To provide financial assistance in the form of grants for one or more projects consistent with its corporate purposes;

(15) To borrow money and to issue bonds and to provide for the rights of the holders thereof;

[~~(13)~~] **(16)** To grant options to renew any lease with respect to any project or projects and to grant options to buy any project at such price as the agency may deem desirable;

[~~(14)~~] **(17)** To designate the depositories of its money either within or without the state;

[~~(15)~~] **(18)** To enter into agreements requiring payments in lieu of taxes. Such agreements shall be in writing and in addition to other terms shall contain: the amount due annually to each affected tax jurisdiction (or a formula by which the amount due can be calculated), the name and address of the person, office or agency to which payment shall be delivered, the date on which payment shall be made, and the date on which payment shall be considered delinquent if not paid. Unless otherwise agreed by the affected tax jurisdictions, any such agreement shall provide that payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt due to the status of the agency involved in the project. A copy of any such agreement shall be delivered to each affected tax jurisdiction within fifteen days of signing the agreement[~~. In the absence of any such written agreement, payments in lieu of taxes made by an agency shall be allocated in the same proportions as they had been prior to January first, nineteen hundred ninety-three for so long as the agency's activities render a project non-taxable by affected tax jurisdictions~~] **and published by the agency on its website**;

[~~(16)~~] (19) To establish and re-establish its fiscal year; and

[~~(17)~~] (20) To do all things necessary or convenient to carry out its purposes and exercise the powers expressly given in this title.

§ 3-a. Subdivision 15 of section 858 of the general municipal law, as amended by chapter 708 of the laws of 2022, is amended to read as follows:

[~~(15)~~] (18) To enter into agreements requiring payments in lieu of taxes. Such agreements shall be in writing and in addition to other terms shall contain: the amount due annually to each affected tax jurisdiction (or a formula by which the amount due can be calculated), the name and address of the person, office or agency to which payment shall be delivered, the date on which payment shall be made, and the date on which payment shall be considered delinquent if not paid. Unless otherwise agreed by the affected tax jurisdictions, any such agreement shall provide that payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt due to the status of the agency involved in the project. A copy of any such agreement shall be delivered to each affected tax jurisdiction within fifteen days of signing the agreement[~~. In the absence of any such written agreement, payments in lieu of taxes made by an agency shall be allocated in the same proportions as they had been prior to January first, nineteen hundred ninety-three for so long as the agency's activities render a project non-taxable by affected tax jurisdictions~~] and published by the agency on its website. A notification of the expiration of such agreement shall be delivered to the affected tax jurisdiction two years prior to the expiration of such agreement and immediately upon early termination of an agreement[~~;~~].

§ 4. The general municipal law is amended by adding a new section 858-c to read as follows:

§ 858-c. Purchase or lease of real property owned by a county, city, town or village. 1. The local legislative body of a county, city, town or village may by resolution determine that specifically described real property owned by the county, city, town or village is not required for use by such county, city, town or village and authorize the county, city, town or village to sell or lease such real property to an agency; provided, however, that title to such land be not declared inalienable as a forest preserve or a parkland.

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, public notice (except as provided in subdivision four of this section), 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 agency; provided, however, that in the case of a lease the term may not exceed ninety-nine 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 board of the borough in which such real property is located.

3. Before any sale or lease to an agency shall be authorized, a public hearing shall be held by the local legislative body or borough board to consider the proposed sale or lease.

4. Notice of such hearing shall be published at least ten 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 borough board. Such notice shall include a description of the real property proposed to be

sold or leased; a statement of the estimated fair market value of the real property proposed to be sold or leased; the value of the financial consideration to be received by the county, city, town or village from such sale or lease of the real property; and a statement of the intended use or disposition of such real property by the agency.

§ 5. Subdivision 3 of section 859 of the general municipal law is REPEALED.

§ 6. The opening paragraph and subdivisions 1 and 2 of section 859-a of the general municipal law, as added by chapter 356 of the laws of 1993, are amended and a new subdivision 3-a is added to read as follows:

Prior to providing any financial assistance [~~of~~] totaling more than one hundred thousand dollars to any project, the agency must comply with the following prerequisites:

1. The agency must adopt a resolution describing the project and the type and amount of financial assistance that the agency is contemplating with respect to such project. Such assistance shall be consistent with the uniform [~~tax exemption~~] financial assistance policy adopted by the agency pursuant to subdivision four of section eight hundred seventy-four of this [~~chapter~~] title, unless the agency has followed the procedures for deviation from such policy specified in paragraph (b) of such subdivision.

2. The agency must hold a public hearing with respect to the project and the proposed financial assistance being contemplated by the agency not less than thirty days prior to executing a written agreement to provide financial assistance. Said public hearing shall be held in [~~a~~] each city, town or village where the project to receive financial assistance is located or proposes to locate. At said public hearing, interested parties shall be provided reasonable opportunity, both orally and in writing, to present their views with respect to the project and the type and amount of financial assistance to be provided. The agency shall also accept written comments up to seven days after such hearing is held.

3-a. The agency shall maintain a complete record of the hearing, including all documents, oral statements, and written statements presented at or within seven days following the hearing. All members shall be provided with a copy of such record at least seven days before voting whether to approve financial assistance for the project. Such record shall also be posted on the agency website at the time it is provided to members.

§ 7. The general municipal law is amended by adding four new sections 859-d, 859-e, 859-f and 859-g to read as follows:

§ 859-d. Project application and approval criteria. 1. The project applicant shall submit an application, developed by the agency, for approval of a proposed project and financial assistance. The agency shall adopt project application review and approval criteria that shall be applied to all project applications under consideration for approval and financial assistance. The decision to approve or not approve financial assistance shall be based on, but not limited to, consideration of the following criteria:

(a) Strategic objectives. Consideration is to be given to the purpose of the project, such as the nature of the planned business activity, the extent to which the planned business activity is unrepresented or underrepresented in the community, and whether the project involves a business interested in relocating from outside the state of New York.

(b) Job creation. A decision to fund a project shall be based on the number of jobs to be created or retained by the proposed project, the

range of projected salaries and benefits associated with jobs to be created, and the benchmarks and timeframes to be used by the project to determine whether it is meeting projected job creation and retention goals.

(c) The financial viability of the project. Approval for funding must consider the extent to which the viability and success of the project is dependent on financial assistance from the agency. The agency shall also consider the amount and type of financial assistance being requested, the amount and type of private financing required, the amount and type of capital investment to be provided by the project applicant, and any prior financial assistance provided to the project or to the project applicant.

(d) Economic benefits. Funding decisions shall consider the potential economic and financial impact of the project on existing businesses in the area, on the affected tax jurisdictions, and on the local labor market.

(e) Legal issues. Consideration shall be given to the project applicant's record of compliance with applicable laws and regulations.

2. The project application review and approval criteria shall be reviewed and approved annually at a regular meeting of the agency and made available to the public on the agency's website.

3. The agency shall provide the director of the authorities budget office with an electronic copy of the application and project review and approval criteria within thirty days of their adoption or revision.

4. The agency shall retain a written record of the evaluation of each project application to document its decision to provide or deny financial assistance.

§ 859-e. Financial assistance agreement. 1. The agency shall enter into a written agreement with the project applicant prior to providing financial assistance. The agreement shall include the following information:

(a) a description of the amount and type of financial assistance to be provided by the agency, including a description and the value of property conveyed at less than fair market value;

(b) a description of the amount of financing to be provided by the project applicant, including the amount and type of capital investment to be provided;

(c) the purpose of the project;

(d) the amount, types, sources and commitments of any private financing;

(e) the projected number of new full-time and part-time positions expected to be created over the period of financial assistance, and an estimated schedule by year of when those positions will be created;

(f) the number and types of full-time and part-time jobs to be retained, and the number of filled positions at the project as of the date the agreement is executed;

(g) the types and value of other forms of financial assistance provided to the project or requested by the project applicant from other state or local government agencies or authorities; and

(h) the penalties to be imposed on the project applicant if the terms of the agreement are not met.

2. The length of a financial assistance agreement shall be limited to no more than five years; provided however that the agreement may be renewed for up to five additional years if the agency determines that the project applicant has acted in good faith to meet the terms and conditions of the agreement. In no event may financial assistance in the

form of a loan or exemption from taxation be provided to a project for more than ten years.

3. The financial assistance agreement shall be made available to the public on the website of the agency.

4. The agency shall adopt a methodology to evaluate the conformance of each assisted project to the terms and conditions of the financial assistance agreement. This methodology shall be made available to the public on the agency's website.

§ 859-f. Recapture of certain financial assistance. 1. The agency, pursuant to the terms and conditions of its financial assistance agreement, may recapture financial assistance to a project from real property tax exemptions, mortgage recording tax exemptions, or local sales or compensating use tax exemptions if (a) the project violates state or federal tax law, labor law, environmental protection law, or contract law, or any state or federal rule or regulation implementing such law, as determined by a court of competent jurisdiction or administrative tribunal, provided that such court or tribunal concludes that the violation would cause material harm to the economy or quality of life of the community; or (b) all or part of the project's business activity or workforce is moved to a location outside the community served by the agency and by doing so violates the terms and conditions of its financial assistance agreement.

2. An agency which elects to initiate the recapture of financial assistance pursuant to subdivision one of this section must notify the recipient of such financial assistance in writing that it is in default of its financial assistance agreement and may direct the recipient of financial assistance to repay up to the full amount of such financial assistance received as of the date of the written notice plus interest at the rate set forth in section five thousand four of the civil practice law and rules.

3. Financial assistance recaptured pursuant to this section and any interest paid shall be redistributed to affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt. Unless otherwise agreed to in writing by an affected tax jurisdiction, the agency shall not retain any portion of such funds as an administrative or project fee.

§ 859-g. Wages and standards. Whenever a recipient of financial assistance from an agency enters into a contract, subcontract, lease or other agreement for or in connection with the construction, demolition, reconstruction, rehabilitation, repair, or renovation of an assisted project, the recipient of financial assistance shall pay workers engaged in such work no less than the prevailing rate of wage and supplements under article eight of the labor law.

§ 8. Subdivision 1 of section 862 of the general municipal law, as amended by section 1 of part J of chapter 59 of the laws of 2013, is amended to read as follows:

(1) (a) No [~~funds~~] financial assistance of the agency shall be used in respect [~~of~~] to any project if the [~~completion thereof would result in~~] project approval or provision of financial assistance contributes to the removal of [~~an industrial or manufacturing plant of~~] all or part of the project occupant from one area of the state to another area of the state or in the abandonment of one or more [~~plants or~~] facilities of the project occupant located within the state, or provides the project with a competitive advantage over existing like businesses in the same industry located in the same city, town, or village as such project,

provided, however, that [~~neither restriction~~] such restrictions shall not apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

(b) For the purposes of this subdivision, "competitive advantage" shall include trade secrets that are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise. Other factors to be considered in determining whether a trade secret exists include:

(i) the extent to which the information is known outside the business;

(ii) the extent to which the information is known by a business' employees and others involved in the business;

(iii) the extent of measures taken by a business to guard the secrecy of the information;

(iv) the value of the information to a business and to its competitors;

(v) the amount of effort or money expended by a business in developing the information; and,

(vi) the ease or difficulty with which the information could be properly acquired or duplicated by others. If there has been a voluntary disclosure by the plaintiff, or if the facts pertaining to the matter are a subject of general knowledge in the trade, then any property right has evaporated.

§ 9. Subdivision 4 of section 874 of the general municipal law, as amended by chapter 357 of the laws of 1993, paragraph (a) as amended by chapter 386 of the laws of 2019, and paragraph (b) as amended by chapter 766 of the laws of 2022, is amended to read as follows:

(4) (a) The agency shall [~~establish~~] adopt a uniform [~~tax exemption~~] financial assistance policy, [~~with input from~~] subject to the approval of all affected tax jurisdictions, which shall be applicable to the provision of financial assistance pursuant to section eight hundred fifty-nine-a of this [~~chapter~~] title and shall provide guidelines for the claiming of real property, mortgage recording, and sales tax exemptions. Such guidelines shall include, but not be limited to: period of exemption; payments in lieu of taxes, as a percentage of [~~exemption~~] taxes that would have been levied by or on behalf of affected tax jurisdictions if the project was not tax exempt by reason of agency involvement; types of projects for which exemptions can be claimed; procedures for payments in lieu of taxes and instances in which real property appraisals are to be performed as a part of an application for tax exemption; in addition, agencies shall in adopting such policy consider such issues as: the extent to which a project will create or retain permanent, private sector jobs; the estimated value of any tax exemptions to be provided; whether affected tax jurisdictions shall be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided; the impact of a proposed project on existing and proposed businesses and economic development projects in the vicinity; the amount of private sector investment generated or likely to be generated by the proposed project; the demonstrated public support for the proposed project; the likelihood of accomplishing the proposed project in a timely fashion; the effect of the proposed project upon the environment; the extent to which the project will utilize, to the fullest extent practicable and economically feasible,

resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures; the extent to which the proposed project will require the provision of additional services, including, but not limited to additional educational, transportation, police, emergency medical or fire services; and the extent to which the proposed project will provide additional sources of revenue for municipalities and school districts. **The adopted uniform financial assistance policy shall be provided to the chief executive officer and the members of the governing body of each affected tax jurisdiction and shall be made available for public inspection at the agency's office and on the agency's website upon its adoption.**

(b) The agency shall [~~establish a procedure~~] **adopt criteria** for deviation from the uniform [~~tax exemption~~] **financial assistance** policy required pursuant to this subdivision**, which shall be subject to the approval of all affected local tax jurisdictions**. The agency shall set forth in writing the reasons for deviation from such policy, and shall further notify by certified mail, return receipt requested, the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefor **not less than sixty days before such deviation from the uniform financial assistance policy takes effect**. When the affected local taxing jurisdiction is a school district, the agency shall notify by certified mail, return receipt requested, the school board and district superintendent of each affected school district.

§ 10. Section 1953 of the public authorities law, as added by chapter 759 of the laws of 1967, the opening paragraph, second undesignated paragraph, and subdivisions 4 and 7 as amended by chapter 579 of the laws of 2021, subdivision 8 as amended, subdivision 14 as added and subdivisions 15 and 16 as renumbered by chapter 356 of the laws of 1993, and subdivisions 9 and 13 as amended by chapter 907 of the laws of 1972, is amended to read as follows:

§ 1953. Purpose and powers of the authority.

The purposes of the authority shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehouse, **civic facilities,** commercial and research facilities including industrial pollution control facilities, transportation facilities including but not limited to those relating to water, highway, rail and air, in one or more areas of the city, particularly but not exclusively at the site of what was formerly the Troy airport including an airstrip or airport located in the southern section of the city and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of said city and to improve their standard of living; provided, however, that the authority shall not undertake any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project applicant located within the state, provided, however, that neither restriction shall apply if the authority shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry. Except as otherwise provided for in this section, no financial assistance of the authority shall be provided in respect of any project where facilities or property that are primarily used in making retail sales to customers who

personally visit such facilities constitute more than one-third of the total project cost. For the purposes of this article, "retail sales" shall mean: (i) sales by a registered vendor under article twenty-eight of the tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers. Except, however, that tourism destination projects shall not be prohibited by this paragraph. For the purpose of this paragraph, "tourism destination" shall mean a location or facility which is likely to attract a significant number of visitors from outside the economic development region as established by section two hundred thirty of the economic development law in which the project is located.

Notwithstanding the provisions of this section to the contrary, such financial assistance may, however, be provided to a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost, where: (i) the predominant purpose of the project would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the city of Troy because of a lack of reasonably accessible retail trade facilities offering such goods or services; or (ii) the project is located in a highly distressed area. With respect to projects authorized pursuant to this paragraph no project shall be approved unless the authority shall find after the public hearing required by section twenty-three hundred seven of this chapter 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 authority makes such a finding, prior to providing financial assistance to the project by the authority, the chief executive officer of the city of Troy shall confirm the proposed action of the authority. To carry out said purposes, the authority shall have power:

1. To sue and be sued;

2. To have a seal and alter the same at pleasure;

3. To acquire, hold and dispose of personal property for its corporate purpose;

4. To acquire by purchase, grant, lease, gift, condemnation, or otherwise and to use, real property or rights or easements therein necessary for its corporate purposes, and to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of any such property in such manner as the authority shall determine. With respect to real property conveyed to it by the city, however, such power of disposition shall be limited as hereinafter provided in section nineteen hundred fifty-five of this title;

5. **To acquire real property within the city of Troy as necessary for its corporate purposes pursuant to section eight hundred fifty-eight-c of the general municipal law;**

6. To make by-laws for the management and regulation of its affairs and, subject to agreements with its bondholders, for the regulation of the use of the project;

[~~6.~~] **7.** With the consent of the city, to use agents, employees and facilities of the city, paying the city its agreed proportion of the compensation or costs;

[~~7.~~] **8.** 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 authority, subject, however, to the provisions of the civil service law as hereinafter provided in section nineteen hundred fifty-four of this title;

[~~8.~~] **9.** To appoint an attorney, who may be the corporation counsel of the city, 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; provided that an attorney acting as bond counsel for a project must file with the authority 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 authority, 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 authority;

[~~9.~~] **10.** To make contracts and leases upon such terms as the authority shall deem appropriate, including without limitation leases which grant the tenant of a project an option to renew or an option to purchase the project, or both, at a fixed or otherwise predetermined price and to execute all instruments necessary or convenient;

[~~10.~~] **11.** To acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects;

[~~11.~~] **12.** To accept gifts, grants, loans or contributions from, and enter into contracts or other transactions with, the United States and the state or any agency of either of them, any municipality, any public or private corporation or any other legal entity, and to use any such gifts, grants, loans or contributions for any of its corporate purposes;

[~~12.~~] **13. To provide financial assistance in the form of loans to improve, maintain or equip one or more projects consistent with its corporate purposes;**

14. To provide financial assistance in the form of grants to one or more projects consistent with its corporate purposes;

15. To borrow money and to issue bonds and to provide for the rights of the holders thereof;

[~~13.~~] **16.** To designate the depositories of its money either within or without the state of New York;

[~~14.~~] **17.** To enter into agreements requiring payments in lieu of taxes. Such agreements shall be in writing and in addition to other terms shall contain: the amount due annually to each affected tax jurisdiction (or a formula by which the amount due can be calculated), the name and address of the person, office or agency to which payment shall be delivered, the date on which payment shall be made, and the date on which payment shall be considered delinquent if not paid. Unless otherwise agreed by the affected tax jurisdictions, any such agreement shall provide that payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt due to the status of the authority involved in the project. A copy of any such agreement shall be delivered to each affected tax jurisdiction within fifteen days of signing the agreement. In the absence of any such written agreement, payments in lieu of taxes made by an agency shall be allocated in the same proportions as they had been prior to January first, nineteen hundred ninety-three for so long as the authority's activities render a project non-taxable by affected tax jurisdictions.

[~~15.~~] **18.** To establish and reestablish its fiscal year; and

[~~16.~~] **19.** To do all things necessary or convenient to carry out its purposes and exercise the powers expressly given in this title.

§ 10-a. Subdivision 14 of section 1953 of the public authorities law, as amended by chapter 708 of the law of 2022, is amended to read as follows:

[~~14.~~] **17.** To enter into agreements requiring payments in lieu of taxes. Such agreements shall be in writing and in addition to other terms shall contain: the amount due annually to each affected tax jurisdiction (or a formula by which the amount due can be calculated), the name and address of the person, office or agency to which payment shall be delivered, the date on which payment shall be made, and the date on which payment shall be considered delinquent if not paid. Unless otherwise agreed by the affected tax jurisdictions, any such agreement shall provide that payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt due to the status of the authority involved in the project. A copy of any such agreement shall be delivered to each affected tax jurisdiction within fifteen days of signing the agreement. In the absence of any such written agreement, payments in lieu of taxes made by an agency shall be allocated in the same proportions as they had been prior to January first, nineteen hundred ninety-three for so long as the authority's activities render a project non-taxable by affected tax jurisdictions. A notification of the expiration of such agreement shall be delivered to the affected tax jurisdiction two years prior to the expiration of such agreement and immediately upon early termination of an agreement;

§ 11. Section 1953-a of the public authorities law, as added by chapter 356 of the laws of 1993, subdivision 1 as amended by chapter 357 of the laws of 1993, and subdivision 1-a as added by chapter 766 of the laws of 2022, is amended to read as follows:

§ 1953-a. Additional prerequisites to the provision of financial assistance. Prior to providing any financial assistance [~~of~~] **totaling** more than one hundred thousand dollars to any project, the authority must comply with the following prerequisites:

1. The authority must adopt a resolution describing the project and **type and amount of** the financial assistance that the authority is contemplating with respect to such project. Such assistance shall be consistent with the uniform [~~tax exemption~~] **financial assistance** policy adopted by the agency pursuant to subdivision one of section nineteen hundred sixty-three-a of this [~~chapter~~] **title**, unless the agency has followed procedures for deviation from such policy specified in subdivision two of such section.

1-a. The authority shall deliver a copy of the resolution adopted pursuant to subdivision one of this section by certified mail, return receipt requested, to the chief executive officer of each affected tax jurisdiction. When the affected tax jurisdiction is a school district, the authority shall deliver a copy of such resolution by certified mail, return receipt requested, to the school board and district superintendent of each affected school district.

2. The authority must hold a public hearing with respect to the project and the proposed financial assistance being contemplated by the authority **not less than thirty days prior to executing a written agreement to provide financial assistance**. At said public hearing, interested parties shall be provided reasonable opportunity, both orally and in writing, to present their views with respect to the project **and the**

type and amount of financial assistance to be provided. The authority shall also accept written comments up to seven days after such hearing is held.

3. The authority must give at least ten days published notice of said public hearing and shall, at the same time, provide notice of such hearing to the chief executive officer of the affected tax jurisdiction within which the project is located. The notice of hearing must state the time and place of the hearing, contain a general, functional description of the project, describe the prospective location of the project, identify the initial owner, operator or manager of the project and generally describe the financial assistance contemplated by the authority with respect to the project.

4. The authority shall maintain a complete record of the hearing, including all documents and oral statements, and written statements presented at or within seven days following such hearing. All members shall be provided with a copy of such record at least seven days before voting whether to approve financial assistance for the project. Such record shall also be posted on the authority website at the time it is provided to members.

§ 12. The public authorities law is amended by adding four new sections 1953-b, 1953-c, 1953-d and 1953-e to read as follows:

§ 1953-b. Project application and approval criteria. 1. The project applicant shall submit an application, developed by the authority, for approval of a proposed project and financial assistance. The authority shall adopt project application review and approval criteria that shall be applied to all project applications under consideration for approval and financial assistance. The decision to approve or not approve financial assistance shall be based on, but not limited to, consideration of the following criteria:

(a) Strategic objectives. Consideration is to be given to the purpose of the project, such as the nature of the planned business activity, the extent to which the planned business activity is unrepresented or underrepresented in the community, and whether the project involves a business interested in relocating from outside the state of New York.

(b) Job creation. A decision to fund a project shall be based on the number of jobs to be created or retained by the proposed project, the range of projected salaries and benefits associated with jobs to be created, and the benchmarks and timeframes to be used by the project to determine whether it is meeting projected job creation and retention goals.

(c) The financial viability of the project. Approval for funding shall consider the extent to which the viability and success of the project is dependent on financial assistance from the authority. The authority shall also consider the amount and type of financial assistance being requested, the amount and type of private financing required, the amount and type of capital investment to be provided by the project applicant, and any prior financial assistance provided to the project or to the project applicant.

(d) Economic benefits. Funding decisions shall consider the potential economic and financial impact of the project on existing businesses in the area, on the affected tax jurisdictions, and on the local labor market.

(e) Legal issues. Consideration shall be given to the project applicant's record of compliance with applicable laws and regulations.

2. The project application review and approval criteria shall be reviewed and approved annually at a regular meeting of the authority and made available to the public on the authority's website.

3. The authority shall provide the director of the authorities budget office with an electronic copy of the application and project review and approval criteria within thirty days of their adoption or revision.

4. The authority shall retain a written record of the evaluation of each project application to document its decision to provide or deny financial assistance.

§ 1953-c. Financial assistance agreement. 1. The authority shall enter into a written agreement with the project applicant prior to providing financial assistance. The agreement shall include the following information:

(a) a description of the amount and type of financial assistance to be provided by the authority, including a description and the value of property conveyed at less than fair market value;

(b) a description of the amount of financing to be provided by the project applicant, including the amount and type of capital investment to be provided;

(c) the purpose of the project;

(d) the amount, types, sources and commitments of any private financing;

(e) the projected number of new full-time and part-time positions expected to be created over the period of financial assistance, and an estimated schedule by year of when those positions will be created;

(f) the number and types of full-time and part-time jobs to be retained, and the number of filled positions at the project as of the date the agreement is executed;

(g) the types and value of other forms of financial assistance provided to the project or requested by the project applicant from other state or local government agencies or authorities; and

(h) the penalties to be imposed on the project applicant if the terms of the agreement are not met.

2. The length of a financial assistance agreement shall be limited to no more than five years; provided however that the agreement may be renewed for up to five additional years if the authority determines that the project applicant has acted in good faith to meet the terms and conditions of the agreement. In no event may financial assistance in the form of a loan or exemption from taxation be provided to a project for more than ten years.

3. The financial assistance agreement shall be made available to the public on the website of the authority.

4. The authority shall adopt a methodology to evaluate the conformance of each assisted project to the terms and conditions of the financial assistance agreement. This methodology shall be made available to the public on the authority's website.

§ 1953-d. Recapture of certain financial assistance. 1. The authority, pursuant to the terms and conditions of its financial assistance agreement, may recapture financial assistance to a project from the proceeds of bonds issued by the authority, mortgage recording tax exemptions, or local sales or compensating use tax exemptions if (a) the project violates state or federal tax law, labor law, environmental protection law, or contract law, or any state or federal rule or regulation implementing such law, as determined by a court of competent jurisdiction or administrative tribunal, provided that such court or tribunal concludes that the violation would cause material harm to the economy or quality

of life of the community; or (b) all or part of the project's business activity or workforce is moved to a location outside the community served by the authority and by doing so violates the terms and conditions of its financial assistance agreement.

2. An authority which elects to initiate the recapture of financial assistance pursuant to subdivision one of section eight hundred fifty-nine-f of the general municipal law must notify the recipient of such financial assistance in writing that it is in default of its financial assistance agreement and may direct the recipient of financial assistance to repay up to the full amount of such financial assistance received as of the date of the written notice plus interest at the rate set forth in section five thousand four of the civil practice law and rules.

3. Financial assistance recaptured pursuant to this section and any interest paid shall be redistributed to affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt. Unless otherwise agreed to in writing by an affected tax jurisdiction, the authority shall not retain any portion of such funds as an administrative or project fee.

§ 1953-e. Wages and standards. Whenever a recipient of financial assistance from the authority enters into a contract, subcontract, lease or other agreement for or in connection with the construction, demolition, reconstruction, rehabilitation, repair, or renovation of an assisted project, the recipient of financial assistance shall pay workers engaged in such work no less than the prevailing rate of wage and supplements under article eight of the labor law.

§ 13. Section 1963-a of the public authorities law, as amended by chapter 357 of the laws of 1993, subdivision 1 as amended by chapter 386 of the laws of 2019, and subdivision 2 as amended by chapter 766 of the laws of 2022, is amended to read as follows:

§ 1963-a. Uniform [~~tax exemption~~] financial assistance policy. 1. The authority shall [~~establish~~] adopt a uniform [~~tax exemption~~] financial assistance policy, [~~with input from~~] subject to the approval of affected local taxing jurisdictions, which shall be applicable to provisions of financial assistance pursuant to section nineteen hundred fifty-three-a of this title and shall provide guidelines for the claiming of real property, mortgage recording, and sales tax exemptions. Such guidelines shall include, but not be limited to: period of exemption; payments in lieu of taxes as a percentage of [~~exemption~~] taxes that would have been levied by or on behalf of affected tax jurisdictions if the project was not exempt by reason of authority involvement; types of projects for which exemptions can be claimed; procedures for payments in lieu of taxes and instances in which real property appraisals are to be performed as a part of an application for tax exemption; in addition, the authority in adopting such policy shall consider such issues as: the extent to which a project will create or retain permanent, private sector jobs; the estimated value of any tax exemption to be provided; whether affected tax jurisdictions should be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided; the impact of a proposed project on existing and proposed businesses and economic development projects in the vicinity; the amount of private sector investment generated or likely to be generated by the proposed project; the demonstrated public support for the proposed project; the likelihood of accomplishing the proposed project in a timely fashion; the effect of the proposed project upon the envi-

ronment; the extent to which the project will utilize, to the fullest extent practicable and economically feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures; the extent to which the proposed project will require the provision of additional services, including, but not limited to additional educational, transportation, police, emergency medical or fire services; and the extent to which the proposed project will provide additional sources [~~or~~] **of** revenue for municipalities and school districts. **The adopted uniform financial assistance policy shall be provided to the chief executive officer and members of the governing body of each affected tax jurisdiction and shall be made available for public inspection at the authority's office and on the authority's website upon its adoption.**

2. The authority shall [~~establish a procedure~~] **adopt criteria** for deviation from the uniform [~~tax exemption~~] **financial assistance** policy required pursuant to this section. The authority shall set forth in writing the reasons for deviation from such policy, and shall further notify by certified mail, return receipt requested, the affected tax jurisdictions of the proposed deviation from such policy and the reasons therefor **not less than sixty days before such deviation from the uniform financial assistance policy takes effect**. When the affected tax jurisdiction is a school district, the authority shall notify by certified mail, return receipt requested, the school board and district superintendent of each affected school district.

§ 14. Section 2306 of the public authorities law, as added by chapter 915 of the laws of 1969, the opening paragraph and an undesignated paragraph as amended by chapter 304 of the laws of 2013, subdivision 8 as amended, subdivision 14 as added and subdivisions 15 and 16 as renumbered by chapter 356 of the laws of 1993, and subdivision 9 as amended by chapter 556 of the laws of 1973, is amended to read as follows:

§ 2306. Purpose and powers of the authority. The purposes of the authority shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehouse, **civic facilities,** commercial and research facilities and facilities for use by a federal agency or a medical facility including industrial pollution control facilities, which may include transportation facilities including but not limited to those relating to water, highway, rail and air, in one or more areas of the city, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of said city and to improve their medical care and standard of living; provided, however, that the authority shall not undertake any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in abandonment of one or more plants or facilities of the project applicant located within the state, provided, however, that neither restriction shall apply if the authority shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry. Except as otherwise provided for in this section, no financial assistance of the authority shall be provided in respect of any project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost. For

the purposes of this article, "retail sales" shall mean: (i) sales by a registered vendor under article twenty-eight of the tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers. Except, however, that tourism destination projects shall not be prohibited by this paragraph. For the purpose of this paragraph, "tourism destination" shall mean a location or facility which is likely to attract a significant number of visitors from outside the economic development region as established by section two hundred thirty of the economic development law, in which the project is located.

Notwithstanding the provisions of this section to the contrary, such financial assistance may, however, be provided to a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost, where: (i) the predominant purpose of the project would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the city of Auburn because of a lack of reasonably accessible retail trade facilities offering such goods or services; or (ii) the project is located in a highly distressed area. With respect to projects authorized pursuant to this paragraph no project shall be approved unless the authority shall find after the public hearing required by section twenty-three hundred seven 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 authority makes such a finding, prior to providing financial assistance to the project by the authority, the chief executive officer of the city of Auburn shall confirm the proposed action of the authority. To carry out said purpose, the authority shall have power:

1. To sue and be sued;

2. To have a seal and alter the same at pleasure;

3. To acquire, hold and dispose of personal property for its corporate purpose;

4. To acquire by purchase, grant, lease, gift, condemnation, or otherwise and to use, real property or rights or easements therein necessary for its corporate purposes, and to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of any such property in such manner as the authority shall determine. With respect to real property conveyed to it by the city, however, such power of disposition shall be limited as hereinafter provided in section twenty-three hundred ten of this title;

5. **To acquire real property within the city of Auburn as necessary for its corporate purposes pursuant to section eight hundred fifty-eight-c of the general municipal law;**

6. To make by-laws for the management and regulation of its affairs and, subject to agreements with its bondholders, for the regulation of the use of the project[~~.~~]**;**

[~~6.~~] **7.** With the consent of the city, to use agents, employees and facilities of the city, paying the city its agreed proportion of the compensation or costs[~~.~~]**;**

[~~7.~~] **8.** 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 authority, subject, however, to the provisions of the civil

service law hereinafter provided in section twenty-three hundred eight of this title;

[~~8.~~] 9. To retain and employ financial advisors, engineers, architects, attorneys and other consultants for professional and technical assistance and advice; that an attorney acting as bond counsel for a project must file with the authority 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 the parties other than the authority, 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 authority;

[~~9.~~] 10. To make contracts and leases upon such terms as the authority shall deem appropriate, including without limitation leases which grant the tenant of a project an option to renew or an option to purchase the project, or both, at a fixed or otherwise predetermined price, and to execute all instruments necessary or convenient;

[~~10.~~] 11. To acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects;

[~~11.~~] 12. To accept gifts, grants, loans or contributions from, and enter into contracts or other transactions with, the United States and the state or any agency of either of them, any municipality, any public or private corporation or any other legal entity, and to use any such gifts, grants, loans or contributions for any of its corporate purposes;

[~~12.~~] 13. To provide financial assistance in the form of loans to improve, maintain or equip one or more projects consistent with its corporate purposes;

14. To provide financial assistance in the form of grants for one or more projects consistent with its corporate purposes;

15. To borrow money and to issue bonds and to provide for the rights of the holders thereof;

[~~13.~~] 16. To designate the depositories of its money in the city of Auburn[~~.~~];

[~~14.~~] 17. To enter into agreements requiring payments in lieu of taxes. Such agreements shall be in writing and in addition to other terms shall contain: the amount due annually to each affected tax jurisdiction (or a formula by which the amount due can be calculated), the name and address of the person, office or agency to which payment shall be delivered, the date on which the payment shall be made, and the date on which payment shall be considered delinquent if not paid. Unless otherwise agreed by the affected tax jurisdictions, any such agreement shall provide that payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt due to the status of the agency involved in the project. A copy of any such agreement shall be delivered to each tax affected jurisdiction within fifteen days of signing the agreement. In the absence of any such written agreement, payments in lieu of taxes shall be allocated in the same proportions as they had been prior to January first, nineteen hundred ninety-three for so long as the authority's activities render a project non-taxable by affected tax jurisdictions[~~.~~];

[~~15.~~] 18. To establish and reestablish its fiscal year; and

[~~16.~~] 19. To do all things necessary or convenient to carry out its purposes and exercise the powers expressly given in this title.

§ 14-a. Subdivision 14 of section 2306 of the public authorities law, as amended by chapter 708 of the laws of 2022, is amended to read as follows:

[~~14.~~] **17.** To enter into agreements requiring payments in lieu of taxes. Such agreements shall be in writing and in addition to other terms shall contain: the amount due annually to each affected tax jurisdiction (or a formula by which the amount due can be calculated), the name and address of the person, office or agency to which payment shall be delivered, the date on which the payment shall be made, and the date on which payment shall be considered delinquent if not paid. Unless otherwise agreed by the affected tax jurisdictions, any such agreement shall provide that payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt due to the status of the agency involved in the project. A copy of any such agreement shall be delivered to each tax affected jurisdiction within fifteen days of signing the agreement. In the absence of any such written agreement, payments in lieu of taxes shall be allocated in the same proportions as they had been prior to January first, nineteen hundred ninety-three for so long as the authority's activities render a project non-taxable by affected tax jurisdictions. A notification of the expiration of such agreement shall be delivered to the affected tax jurisdiction two years prior to the expiration of such agreement and immediately upon early termination of an agreement;

§ 15. Section 2307 of the public authorities law, as added by chapter 356 of the laws of 1993, subdivision 1 as amended by chapter 357 of the laws of 1993, and subdivision 1-a as added by chapter 766 of the laws of 2022, is amended to read as follows:

§ 2307. Additional prerequisites to the provision of financial assistance. Prior to providing any financial assistance [~~of~~] **totaling** more than one hundred thousand dollars to any project, the authority must comply with the following prerequisites:

1. The authority must adopt a resolution describing the project and **type and amount of** the financial assistance that the authority is contemplating with respect to such project. Such assistance shall be consistent with the uniform [~~tax exemption~~] **financial assistance** policy adopted by the agency pursuant to subdivision one of section twenty-three hundred fifteen of this chapter, unless the agency has followed procedures for deviation from such policy specified in subdivision two of such section.

1-a. The authority shall deliver a copy of the resolution adopted pursuant to subdivision one of this section by certified mail, return receipt requested, to the chief executive officer of each affected tax jurisdiction. When the affected tax jurisdiction is a school district, the authority shall deliver a copy of such resolution by certified mail, return receipt requested, to the school board and district superintendent of each affected school district.

2. The authority must hold a public hearing with respect to the project and the proposed financial assistance being contemplated by the authority **not less than thirty days prior to executing a written agreement to provide financial assistance**. At said public hearing, interested parties shall be provided reasonable opportunity, both orally and in writing, to present their views with respect to the project **and the type and amount of financial assistance to be provided. The authority**

shall also accept written comments up to seven days after such hearing is held.

3. The authority must give at least ten days published notice of said public hearing and shall, at the same time, provide notice of such hearing to the chief executive officer of each affected tax [~~jurisidiction~~] jurisdiction within which the project is located. The notice of hearing must state the time and place of the hearing, contain a general, functional description of the project, describe the prospective location of the project, identify the initial owner, operator or manager of the project and generally describe the financial assistance contemplated by the authority with respect to the project.

4. The authority shall maintain a complete record of the hearing, including all documents and oral statements, and written statements presented at or within seven days following such hearing. All members shall be provided with a copy of such record at least seven days before deciding whether to approve financial assistance for the project. Such record shall also be posted on the authority's website at the time it is provided to members.

§ 16. The public authorities law is amended by adding four new sections 2307-a, 2307-b, 2307-c and 2307-d to read as follows:

§ 2307-a. Project application and approval criteria. 1. The project applicant shall submit an application, developed by the authority, for approval of a proposed project and financial assistance. The authority shall adopt project application review and approval criteria that shall be applied to all project applications under consideration for approval and financial assistance. The decision to approve or not approve financial assistance shall be based on, but not limited to, consideration of the following criteria:

(a) Strategic objectives. Consideration is to be given to the purpose of the project, such as the nature of the planned business activity, the extent to which the planned business activity is unrepresented or underrepresented in the community, and whether the project involves a business interested in relocating from outside the state of New York.

(b) Job creation. A decision to fund a project shall be based on the number of jobs to be created or retained by the proposed project, the range of projected salaries and benefits associated with jobs to be created, and the benchmarks and timeframes to be used by the project to determine whether it is meeting projected job creation and retention goals.

(c) The financial viability of the project. Approval for funding shall consider the extent to which the viability and success of the project is dependent on financial assistance from the authority. The authority shall also consider the amount and type of financial assistance being requested, the amount and type of private financing required, the amount and type of capital investment to be provided by the project applicant, and any prior financial assistance provided to the project or to the project applicant.

(d) Economic benefits. Funding decisions shall consider the potential economic and financial impact of the project on existing businesses in the area, on the affected tax jurisdictions, and on the local labor market.

(e) Legal issues. Consideration shall be given to the project applicant's record of compliance with applicable laws and regulations.

2. The project application review and approval criteria shall be reviewed and approved annually at a regular meeting of the authority and made available to the public on the authority's website.

3. The authority shall provide the director of the authorities budget office with an electronic copy of the application and project review and approval criteria within thirty days of their adoption or revision.

4. The authority shall retain a written record of the evaluation of each project application to document its decision to provide or deny financial assistance.

§ 2307-b. Financial assistance agreement. 1. The authority shall enter into a written agreement with the project applicant prior to providing financial assistance. The agreement shall include the following information:

(a) a description of the amount and type of financial assistance to be provided by the authority, including a description and the value of property conveyed at less than fair market value;

(b) a description of the amount of financing to be provided by the project applicant, including the amount and type of capital investment to be provided;

(c) the purpose of the project;

(d) the amount, types, sources and commitments of any private financing;

(e) the projected number of new full-time and part-time positions expected to be created over the period of financial assistance, and an estimated schedule by year of when those positions will be created;

(f) the number and types of full-time and part-time jobs to be retained, and the number of filled positions at the project as of the date the agreement is executed;

(g) the types and value of other forms of financial assistance provided to the project or requested by the project applicant from other state or local government agencies or authorities; and

(h) the penalties to be imposed on the project applicant if the terms of the agreement are not met.

2. The length of a financial assistance agreement shall be limited to no more than five years; provided however that the agreement may be renewed for up to five additional years if the authority determines that the project applicant has acted in good faith to meet the terms and conditions of the agreement. In no event may financial assistance in the form of a loan or exemption from taxation be provided to a project for more than ten years.

3. The financial assistance agreement shall be made available to the public on the website of the authority.

4. The authority shall adopt a methodology to evaluate the conformance of each assisted project to the terms and conditions of the financial assistance agreement. This methodology shall be made available to the public on the authority's website.

§ 2307-c. Recapture of certain financial assistance. 1. The authority, pursuant to the terms and conditions of its financial assistance agreement, may recapture financial assistance to a project from the proceeds of bonds issued by the authority, mortgage recording tax exemptions, or local sales or compensating use tax exemptions if (a) the project violates state or federal tax law, labor law, environmental protection law, or contract law, or any state or federal rule or regulation implementing such law, as determined by a court of competent jurisdiction or administrative tribunal, provided that such court or tribunal concludes that the violation would cause material harm to the economy or quality of life of the community; or (b) all or part of the project's business activity or workforce is moved to a location outside the community

served by the authority and by doing so violates the terms and conditions of its financial assistance agreement.

2. An authority which elects to initiate the recapture of financial assistance pursuant to subdivision one of section eight hundred fifty-nine-e of the general municipal law must notify the recipient of such financial assistance in writing that it is in default of its financial assistance agreement and may direct the recipient of financial assistance to repay up to the full amount of such financial assistance received as of the date of the written notice plus interest at the rate set forth in section five thousand four of the civil practice law and rules.

3. Financial assistance recaptured pursuant to this section and any interest paid shall be redistributed to affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt. Unless otherwise agreed to in writing by an affected tax jurisdiction, the authority shall not retain any portion of such funds as an administrative or project fee.

§ 2307-d. Wages and standards. Whenever a recipient of financial assistance from the authority enters into a contract, subcontract, lease or other agreement for or in connection with the construction, demolition, reconstruction, rehabilitation, repair, or renovation of an assisted project, the recipient of financial assistance shall pay workers engaged in such work no less than the prevailing rate of wage and supplements under article eight of the labor law.

§ 17. Section 2315 of the public authorities law, as amended by chapter 357 of the laws of 1993, subdivision 1 as amended by chapter 386 of the laws of 2019, and subdivision 2 as amended by chapter 766 of the laws of 2022, is amended to read as follows:

§ 2315. Uniform [~~tax exemption~~] financial assistance policy. 1. The authority shall [~~establish~~] adopt a uniform [~~tax exemption~~] financial assistance policy, [~~with input from~~] subject to the approval of affected local taxing jurisdictions, which shall be applicable to provisions of financial assistance pursuant to section twenty-three hundred seven of this title and shall provide guidelines for the claiming of real property, mortgage recording, and sales tax exemptions. Such guidelines shall include, but not be limited to: period of exemption; payments in lieu of taxes as a percentage of [~~exemption~~] taxes that would have been levied by or on behalf of affected tax jurisdictions if the project was not exempt by reason of authority involvement; types of projects for which exemptions may be claimed; procedures for payments in lieu of taxes and instances in which real property appraisals are to be performed as a part of an application for tax exemption; in addition, the authority in adopting such policy shall consider such issues as: the extent to which a project will create or retain permanent, private sector jobs; the estimated value of any tax exemption to be provided; whether affected tax jurisdictions should be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided; the impact of a proposed project on existing and proposed businesses and economic development projects in the vicinity; the amount of private sector investment generated or likely to be generated by the proposed project; the demonstrated public support for the proposed project; the likelihood of accomplishing the proposed project in a timely fashion; the effect of the proposed project upon the environment; the extent to which the project will utilize, to the fullest extent practicable and economically feasible, resource conservation, energy efficien-

cy, green technologies, and alternative and renewable energy measures; the extent to which the proposed project will require the provision of additional services, including, but not limited to additional educational, transportation, police, emergency medical or fire services; and the extent to which the proposed project will provide additional sources of revenue for municipalities and school districts. **The adopted uniform financial assistance policy shall be provided to the chief executive officer and members of the governing body of each affected tax jurisdiction and shall be made available for public inspection at the authority's office and on the authority's website upon its adoption.**

2. The authority shall [~~establish a procedure~~] **adopt criteria** for deviation from the uniform [~~tax exemption~~] **financial assistance** policy required pursuant to this section **which shall be subject to the approval of affected local tax jurisdictions**. The authority shall set forth in writing the reasons for deviation from such policy, and shall further notify by certified mail, return receipt requested, the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefor **not less than sixty days before such deviation from the uniform financial assistance policy shall take effect**. When the affected tax jurisdiction is a school district, the authority shall notify by certified mail, return receipt requested, the school board and district superintendent of each affected school district.

§ 18. Subdivision 1 of section 2976 of the public authorities law, as amended by section 1 of part C of chapter 19 of the laws of 2010, is amended to read as follows:

1. Notwithstanding any other law to the contrary, public benefit corporations (which for purposes of this section shall include industrial development agencies created pursuant to title one of article eighteen-A of the general municipal law or any other provision of law and the New York city housing development corporation created pursuant to article twelve of the private housing finance law) which issue bonds, notes or other obligations **and not-for-profit corporations that issue bonds on behalf of the state or a political subdivision thereof** shall pay to the state a bond issuance charge upon the issuance of such bonds in an amount determined pursuant to subdivision two of this section. Such charge shall be paid to the state department of taxation and finance, upon forms prescribed therefor, no later than fifteen days from the end of the month within which such bonds are issued.

§ 19. The not-for-profit corporation law is amended by adding a new section 206 to read as follows:

§ 206. Financial assistance agreement.

1. A corporation, including a local development corporation, determined to be a local authority pursuant to subdivision two of section two and paragraph (j) of subdivision one of section six of the public authorities law that provides financial assistance to a project in the form of a grant, loan, exemption from taxation, or contribution for the public purpose of relieving or reducing unemployment, promoting and marketing job opportunities, or supporting the formation, relocation, expansion, or retention of business shall enter into a written agreement with the project applicant prior to providing financial assistance.

2. The agreement shall include the following information:

(a) a description of the amount and type of financial assistance to be provided by the corporation, including a description and the value of property conveyed at less than fair market value;

(b) a description of the amount of financing to be provided by the project applicant, including the amount and type of capital investment to be provided;

(c) the purpose of the project;

(d) the amount, types, sources and commitments of any private financing;

(e) the projected number of new full-time and part-time positions expected to be created over the period of financial assistance, and an estimated schedule by year of when those positions will be created;

(f) the number and types of full-time and part-time jobs to be retained, and the number of filled positions at the project as of the date the agreement is executed;

(g) the types and value of other forms of financial assistance provided to the project or requested by the project applicant from other state or local government agencies or authorities; and

(h) the penalties to be imposed on the project applicant if the terms of the agreement are not met.

3. The length of a financial assistance agreement shall be limited to no more than five years; provided however that the agreement may be renewed for up to five additional years if the corporation determines that the project applicant has acted in good faith to meet the terms and conditions of the agreement. In no event may financial assistance in the form of a loan or exemption from taxation be provided to a project for more than ten years.

4. The financial assistance agreement shall be made available to the public on the website of the corporation.

5. The corporation shall adopt a methodology to evaluate the conformance of each assisted project to the terms and conditions of the financial assistance agreement. This methodology shall be made available to the public on the corporation's website.

6. (a) The corporation, pursuant to the terms and conditions of its financial assistance agreement, may recapture financial assistance to a project from grants, loans, real property tax exemptions, mortgage recording tax exemptions, or local sales or compensating use tax exemptions if (i) the project violates state or federal tax law, labor law, environmental protection law, or contract law, or any state or federal rule or regulation implementing such law, as determined by a court of competent jurisdiction or administrative tribunal, provided that such court or tribunal concludes that the violation would cause material harm to the economy or quality of life of the community; or (ii) all or part of the project's business activity or workforce is moved to a location outside the community served by the corporation and by doing so violates the terms and conditions of its financial assistance agreement.

(b) A corporation which elects to initiate the recapture of financial assistance pursuant to subdivision one of this section must notify the recipient of such financial assistance in writing that it is in default of its financial assistance agreement and may direct the recipient of financial assistance to repay up to the full amount of such financial assistance received as of the date of the written notice plus interest at the rate set forth in section five thousand four of the civil practice law and rules.

(c) Financial assistance recaptured pursuant to this section and any interest paid shall be redistributed to affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the

project not been tax exempt. Unless otherwise agreed to in writing by an affected tax jurisdiction, the corporation shall not retain any portion of such funds as an administrative or project fee.

7. Wages and standards. Whenever a recipient of financial assistance from the corporation enters into a contract, subcontract, lease or other agreement for or in connection with the construction, demolition, reconstruction, rehabilitation, repair, or renovation of an assisted project, the recipient of financial assistance shall pay workers engaged in such work no less than the prevailing rate of wage and supplements under article eight of the labor law.

8. For the purposes of this section, "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 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 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 or an automobile racing facility, provided, however, that no agency shall use its funds or provide financial assistance in respect of any project wholly or partially outside the municipality 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, or is to be, located, and such portion of the project located outside such municipality for whose benefit the agency was created shall be contiguous with the portion of the project inside such municipality.

§ 20. Paragraphs (a), (b) and (d) of section 1411 of the not-for-profit corporation law, paragraph (a) as amended by chapter 847 of the laws of 1970 and paragraph (b) as amended by chapter 549 of the laws of 2013, are 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~~]. 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) **of this section** such corporations will be **acting in the public interest and** performing an essential governmental function.

(b) Type of corporation.

A local development corporation [~~is~~] **incorporated for one or more of the purposes described in paragraph (a) of this section shall be** a charitable corporation under this chapter.

(d) Purchase or lease of real property owned by a county, city, town or village.

(1) The local legislative body of a county, city, town or village or, if there is a board of estimate in a city, then the board of estimate, may by resolution determine that specifically described real property owned by the county, city, town or village is not required for use by such county, city, town or village and authorize the county, city, town or village to sell or lease such real property to a local development corporation incorporated or reincorporated under this article; provided, however, that title to such land be not declared inalienable as a forest preserve or a parkland.

(2) Notwithstanding the provisions of any general, special or local law, charter or ordinance to the contrary, **no** such sale or lease may be made without appraisal, public notice, (except as provided in subparagraph (4)) 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 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.

(3) Before any sale or lease to a local development corporation incorporated or reincorporated under this article shall be authorized, a public hearing shall be held by the local legislative body[~~, or by the board of estimate, as the case may be,~~] to consider the proposed sale or lease.

(4) Notice of such hearing shall be published at least ten 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 include a description of the real property proposed to be sold or leased; a statement of the estimated fair market value of the real property proposed to be sold or leased; the value of the financial consideration to be received by the county, city, town or village from such sale or lease of the real property; and a statement of the intended use or disposition of such real property by the local development corporation.**

(5) A local development corporation, incorporated or reincorporated under this section, which purchases or leases real property from a county, city, town or village, shall not, without the written approval of the county, city, town or village, use such real property for any purpose except the purposes set forth in the certificate of incorporation or reincorporation of said local development corporation. In the event such real property is used in violation of the restrictions of

this paragraph, the attorney-general may bring an action or special proceeding to enjoin the unauthorized use.

§ 21. Paragraphs (e), (f), (g), (h), and (i) of section 1411 of the not-for-profit corporation law are relettered paragraphs (f), (g), (h), (i), and (j) and a new paragraph (e) is added to read as follows:

(e) Contracts with municipalities.

Any contract or other agreement between a local development corporation and a municipality or state authority or local authority for one or more of the purposes described in paragraph (a) of this section shall: (i) cause the local development corporation to be defined as a local authority pursuant to subdivision two of section two of the public authorities law; (ii) provide for the municipality or state authority or local authority to receive fair and adequate consideration for the services provided by the local development corporation; (iii) be subject to the requirements of article five-A of the general municipal law; and (iv) have a term not to exceed ten years, subject to one or more renewals for a term not to exceed ten years upon the mutual consent of the parties; provided however that a contract with a municipality shall not be used to finance the municipality's operations or to acquire or improve an asset for use of the municipality.

§ 22. Paragraph (j) of section 1411 of the not-for-profit corporation law, as relettered by section twenty-one of this act, is amended to read as follows:

(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), 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 imposed by [~~**paragraph (e) and paragraph (g)**~~] **paragraphs (c), (d), (e), (h) 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.

§ 23. Federal preemption and severability. The provisions of each section of this act shall be deemed severable, and the declaration by a court of competent jurisdiction that any part thereof is preempted or otherwise invalid shall not affect the remaining parts thereof.

§ 24. This act shall take effect on the thirtieth day after it shall have become a law, or January 1, 2024, whichever shall come first; provided, however, that section fifteen of this act shall apply to bonds issued or re-issued on or after the effective date of this act; provided, however, sections 3-a, 10-a and 14-a of this act shall take effect on the same date and in the same manner as chapter 708 of the laws of 2022, takes effect.