

# STATE OF NEW YORK

---

3437

2023-2024 Regular Sessions

## IN SENATE

January 31, 2023

---

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the New York state urban development corporation act and the economic development law, in relation to establishing a procedure for appointing a president or chairperson upon a vacancy of such position and correcting certain gendered language

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

1 Section 1. Section 4 of section 1 of chapter 174 of the laws of 1968,  
2 constituting the New York state urban development corporation act,  
3 subdivisions 1, 1-a and 3 as amended by chapter 280 of the laws of 1984  
4 and as further amended by section 104 of part A of chapter 62 of the  
5 laws of 2011, subdivision 2 as amended by chapter 55 of the laws of  
6 1992, subdivision 3-a as added by chapter 61 of the laws of 1975, and  
7 subdivisions 7 and 8 as amended by chapter 823 of the laws of 2022, is  
8 amended to read as follows:

9 § 4. New York state urban development corporation. (1) There is hereby  
10 created the New York state urban development corporation. The corpo-  
11 ration shall be a corporate governmental agency of the state, constitut-  
12 ing a political subdivision and public benefit corporation. Its member-  
13 ship shall consist of nine directors as follows: the superintendent of  
14 financial services, the [~~chairman~~] chairperson of the New York state  
15 science and technology foundation, and seven directors to be appointed  
16 by the governor with the advice and consent of the senate. From the  
17 seven directors appointed by him or her, the governor shall designate  
18 the [~~chairman~~] chairperson of the corporation and two others who shall  
19 all serve at the pleasure of the governor. Of the four remaining direc-  
20 tors, one of such directors first appointed by the governor after the  
21 effective date of this subdivision as amended shall serve for a term  
22 ending January first next succeeding his or her appointment, one of such

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

LBD07043-01-3

1 directors shall serve for a term ending one year from such date, one of  
2 such directors shall serve for a term ending two years from such date,  
3 and one of such directors shall serve for a term ending three years from  
4 such date. Their successors shall serve for terms of four years each.  
5 Directors shall continue in office until their successors have been  
6 appointed and qualified. In the event of a vacancy occurring in the  
7 office of a director by death, resignation or otherwise, the governor  
8 shall appoint a successor with the advice and consent of the senate to  
9 serve for the balance of the unexpired term. The governor shall appoint  
10 the president of the corporation, with the advice and consent of the  
11 senate, who shall be the chief executive officer of the corporation and  
12 who shall serve at the pleasure of the governor. Such president may not  
13 be one of the directors appointed by the governor. In the event of a  
14 vacancy occurring in the office of the president or the chairperson by  
15 death, resignation or otherwise, the governor shall appoint a successor  
16 with the advice and consent of the senate to serve for the balance of  
17 the unexpired term. The governor may designate an acting president or  
18 chairperson for a period not to exceed six months or until a successor  
19 has been confirmed by the senate, whichever comes first.

20 (1-a) The superintendent of financial services and the [~~chairman~~]  
21 chairperson of the New York state science and technology foundation each  
22 may designate a person from his or her department to represent him or  
23 her at all meetings of the corporation from which such director may be  
24 absent. Any representative so designated shall have the power to attend  
25 and to vote at any meeting of the corporation from which the director so  
26 designating him or her is absent, with the same force and effect as if  
27 the director designating him or her were present and voting. Such desig-  
28 nation shall be by written notice filed with the [~~chairman~~] chairperson  
29 of the corporation by the director making the designation. The desig-  
30 nation of each such person shall continue until revoked at any time by  
31 written notice to the [~~chairman~~] chairperson by the director making the  
32 designation. Such designation shall not limit the power of the director  
33 making the designation to attend and vote in person at any meeting of  
34 the corporation.

35 (2) The directors, other than the [~~chairman~~] chairperson, shall serve  
36 without salary or other compensation, but each director, including the  
37 [~~chairman~~] chairperson, shall be entitled to reimbursement for actual  
38 and necessary expenses incurred in the performance of his or her offi-  
39 cial duties. Anything to the contrary contained herein notwithstanding,  
40 the president of the corporation[~~, whether or not he or she is a direc-~~  
41 ~~tor,~~] and the [~~chairman if he or she is not the president~~] chairperson  
42 shall be entitled to receive such salary as the directors may determine  
43 for their services as chief executive officer and [~~chairman~~] chairperson  
44 respectively.

45 (3) Such directors other than the superintendent of financial  
46 services, the [~~chairman~~] chairperson of the New York state science and  
47 technology foundation, [~~and any director who serves as president of the~~  
48 ~~corporation~~] may engage in private employment, or in a profession or  
49 business. The corporation, its directors, officers and employees shall  
50 be subject to the provisions of sections seventy-three and seventy-four  
51 of the public officers law.

52 (3-a) The state shall save harmless and indemnify any person who shall  
53 have served as a director, officer or employee of the corporation  
54 against financial loss or litigation expense arising in connection with  
55 any claim, demand, suit or judgment, or the defense thereof, based on a  
56 cause of action, whenever accrued, involving allegations that pecuniary

1 harm was sustained by any person as a result of any transaction of the  
2 corporation taking place on or after the effective date of the New York  
3 state project finance agency act. In the event any such claim, demand,  
4 suit or judgment shall occur, a director, officer or employee of the  
5 corporation shall be saved harmless and indemnified by the state under  
6 this subdivision unless such individual is found by a final judicial  
7 determination not to have acted in good faith, for a purpose which he or  
8 she reasonably believed to be in the best interests of the corporation  
9 or not to have had reasonable cause to believe that his or her conduct  
10 was lawful. In any suit described in the first sentence of this subdivi-  
11 sion, any director, officer or employee made a party defendant to such  
12 suit shall be entitled to be represented by private counsel of his or  
13 her choice; provided, however, that the attorney general is authorized,  
14 as a condition to indemnification of the fees and expenses of such  
15 representation, to require that appropriate groups of such individuals  
16 be represented by the same counsel; and provided further, that with the  
17 approval of the attorney general or of a court (obtained by application  
18 substantially as provided in section seven hundred twenty-five of the  
19 business corporation law), indemnification for such fees and expenses  
20 shall be paid from time to time during the pendency of such suit. The  
21 provisions of this subdivision shall be in addition to and shall not  
22 supplant any indemnification or other benefits heretofore or hereafter  
23 conferred upon directors, officers and employees of the corporation by  
24 section seventeen of the public officers law, by action of the corpo-  
25 ration, or otherwise. The provisions of this subdivision shall inure  
26 only to directors, officers and employees of the corporation, shall not  
27 enlarge or diminish the rights of any other party, and shall not impair,  
28 limit or modify the rights and obligations of any insurer under any  
29 policy of insurance.

30 (4) The directors of the corporation shall serve ex officio as direc-  
31 tors of the corporation for urban development and research of New York,  
32 created by the New York state urban development and research corporation  
33 act, and of the urban development guarantee fund of New York, created by  
34 the urban development guarantee fund of New York act. The [~~chairman~~]  
35 chairperson of the corporation shall serve as [~~chairman~~] chairperson of  
36 the corporation for urban development and research of New York and of  
37 the urban development guarantee fund of New York.

38 (5) Notwithstanding any inconsistent provisions of law, general,  
39 special or local, no officer or employee of the state or of any civil  
40 division thereof, shall be deemed to have forfeited or shall forfeit his  
41 or her office or employment by reason of his or her acceptance of  
42 membership on the corporation created by this section; provided, howev-  
43 er, a director who holds such other public office or employment shall  
44 receive no additional compensation or allowance for services rendered  
45 pursuant to this act, but shall be entitled to reimbursement for his or  
46 her actual and necessary expenses incurred in the performance of such  
47 services.

48 (6) The governor shall appoint a business advisory council for urban  
49 development, to advise and make recommendations to the corporation with  
50 respect to development policies and programs and to encourage maximum  
51 participation in projects of the corporation by the private sector of  
52 the economy, including members of the council and firms and corporations  
53 with which they are [~~affiliated~~] affiliated. Such council shall consist  
54 of not more than twenty-five members, who shall serve at the pleasure of  
55 the governor, and who shall be broadly representative of commerce and  
56 industry, the financial community and the construction and housing

1 industries. Such members shall serve without salary, but shall be enti-  
2 tled to reimbursement for their actual and necessary expenses incurred  
3 in the performance of their duties.

4 (7) The corporation shall establish one or more community advisory  
5 committees to consider and advise the corporation upon matters submitted  
6 to them by the corporation concerning the development of any area or any  
7 project, and may establish rules and regulations with respect to such  
8 committees. The corporation or its successor shall publish and maintain  
9 a list of all community advisory committee members, and community advi-  
10 sory committee meeting agendas, materials, and minutes on its website.  
11 Meeting agendas and materials shall be posted on such website at least  
12 one business day in advance of community advisory committee meetings.  
13 All upcoming meeting times and locations shall be posted on such website  
14 at least one week in advance. Community advisory committee meetings  
15 shall be accessible for the public to view and attend live. The members  
16 of such community advisory committees shall serve, at the pleasure of  
17 the corporation, without salary, but shall be entitled to reimbursement  
18 for their actual and necessary expenses incurred in the performance of  
19 their duties. Notwithstanding any inconsistent provision of law, gener-  
20 al, special or local, no officer or employee of the state or of any  
21 civil division thereof, shall be deemed to have forfeited or shall  
22 forfeit his or her office or employment by reason of his or her accept-  
23 ance of membership on such community advisory committee.

24 (8) The governor may remove any director appointed by him or her for  
25 inefficiency, neglect of duty or misconduct in office after giving him  
26 or her a copy of the charges against him or her, and an opportunity to  
27 be heard, in person or by counsel, in his or her defense, upon not less  
28 than ten days' notice. If any such director shall be removed, the gover-  
29 nor shall file in the office of the department of state a complete  
30 statement of charges made against such director and his or her findings  
31 thereon, together with a complete record of the proceeding. The forego-  
32 ing provisions shall not apply in the case of the chairperson and any  
33 other director who serves at the pleasure of the governor.

34 (9) The corporation and its corporate existence shall continue until  
35 terminated by law, provided, however, that no such law shall take effect  
36 so long as the corporation shall have bonds, notes and other obligations  
37 outstanding, unless adequate provision has been made for the payment  
38 thereof in the documents securing the same. Upon termination of the  
39 existence of the corporation, all its rights and properties shall pass  
40 to and be vested in the state.

41 (10) A majority of the directors of the corporation then in office  
42 shall constitute a quorum for the transaction of any business or the  
43 exercise of any power or function of the corporation, except as other-  
44 wise provided in subdivision two of section sixteen[~~, subdivision two,~~  
45 ~~hereof~~] of this act. The corporation may delegate to one or more of its  
46 directors, or its officers, agents and employees, such powers and duties  
47 as it may deem proper.

48 (11) The corporation shall take affirmative action in working with  
49 construction firms, contractors and subcontractors, labor unions and  
50 manufacturing and industrial firms, to the end that residents of areas  
51 in which projects are to be located shall be afforded participation in  
52 the construction work on projects of the corporation, and in the busi-  
53 ness operations of tenants and occupants of industrial projects under-  
54 taken by the corporation.

55 § 2. Section 10 of the economic development law, as amended by chapter  
56 839 of the laws of 1987, is amended to read as follows:

1     § 10. Department of economic development; commissioner. There shall be  
2 in the state government a department of economic development. The head  
3 of the department shall be the commissioner of economic development who  
4 shall be appointed by the governor, by and with the advice and consent  
5 of the senate, and hold office until the end of the term of the governor  
6 by whom he or she was appointed and until his or her successor is  
7 appointed and has qualified. The principal office of the department  
8 shall be in the city of Albany. Regional offices may be established and  
9 maintained by the department in such places as the commissioner may  
10 determine and for which appropriations are made by the legislature. The  
11 commissioner may, with the commissioners of general services, transpor-  
12 tation and labor, develop and institute a procedure for the uniform  
13 collection of employment and economic data within the state for use in  
14 connection with the scheduling of public works projects.

15     § 3. This act shall take effect immediately.