STATE OF NEW YORK

4042

2023-2024 Regular Sessions

IN SENATE

February 2, 2023

Introduced by Sens. MAYER, HARCKHAM, KRUEGER, SKOUFIS, STAVISKY -- 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, in relation to industrial development agencies

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

Section 1. Section 854 of the general municipal law is amended by adding a new subdivision 22 to read as follows:

(22) "Labor organization" -- shall mean any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection and which is not a company union.

§ 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 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~~] **shall** include [~~representatives~~] **at least one representative** of [~~local government, school boards, organized labor and business~~] **a local labor organization**. 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.

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

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§ 3. Section 859-a of the general municipal law, as added by chapter 356 of the laws of 1993, subdivision 1-a as added by chapter 766 of the laws of 2022, subdivisions 4, 5 and 6 as added by chapter 563 of the laws of 2015 and paragraph (b) of subdivision 5 as amended by section 7 of part X of chapter 59 of the laws of 2021, is amended to read as follows:

§ 859-a. Additional prerequisites to the provisions of financial assistance **or payments in lieu of taxes**. Prior to providing any financial assistance **or payments in lieu of taxes** of 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 financial assistance **or payments in lieu of taxes** that the agency is contemplating with respect to such project. Such assistance **or payments in lieu of taxes** shall be consistent with the uniform tax exemption 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.

1-a. The agency 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 local taxing jurisdiction. When the affected local taxing jurisdiction is a school district, the agency 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 agency must hold a public hearing with respect to the project and the proposed financial assistance **or payments in lieu of taxes** being contemplated by the agency. Said public hearing shall be held in a city, town or village where the project 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.

3. The agency 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 jurisdiction within which the project is located**, each school board president and superintendent of each school district within which the project is located, and to all state senators and members of the state assembly who represent any portion of any affected tax jurisdiction that is subject to the proposed financial assistance or payments in lieu of taxes**. 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 **or payments in lieu of taxes** contemplated by the agency with respect to the project.

4. Each agency shall develop a standard application form, which shall be used by the agency to accept requests for financial assistance **or payments in lieu of taxes** from all individuals, firms, companies, developers or other entities or organizations. The standard application form shall be submitted by or on behalf of the applicant, and subscribed and affirmed under the penalties of perjury by the applicant, or on behalf of the applicant by the chief executive officer or such other individual that is duly authorized to bind the applicant, as true, accurate and complete to the best of his or her knowledge. The standard application

form shall include the following, and may include such other supplemental information as determined to be necessary and appropriate by the agency, including supporting documents and information provided by or on behalf of the applicant:

(a) the name and address of the project applicant;

(b) a description of the proposed project for which financial assistance **or payments in lieu of taxes** is requested, including the type of project, proposed location and purpose of the project;

(c) the amount and type of financial assistance **or payments in lieu of taxes** being requested, including the estimated value of each type of tax exemption sought to be claimed by reason of agency involvement in the project;

(d) a statement that there is a likelihood that the project would not be undertaken but for the financial assistance **or payments in lieu of taxes** provided by the agency or, if the project could be undertaken without financial assistance **or payments in lieu of taxes** provided by the agency, a statement indicating why the project should be undertaken by the agency;

(e) an estimate of capital costs of the project, including all costs of real property and equipment acquisition and building construction or reconstruction, financed from private sector sources, an estimate of the percentage of project costs financed from public sector sources, and an estimate of both the amount to be invested by the applicant and the amount to be borrowed to finance the project[~~.~~]**;**

(f) the projected number of full time equivalent jobs that would be retained and that would be created if the request for financial assistance **or payments in lieu of taxes** is granted, the projected timeframe for the creation of new jobs, the estimated salary and fringe benefit averages or ranges for categories of the jobs that would be retained or created if the request for financial assistance **or payments in lieu of taxes** is granted, and an estimate of the number of residents of the economic development region as established pursuant to section two hundred thirty of the economic development law or the labor market area as defined by the agency, in which the project is located that would fill such jobs. The labor market area defined by the agency for this purpose may include no more than six contiguous counties in the state, including the county in which the project is to be located;

(g) a statement to the effect that the provisions of subdivision one of section eight hundred sixty-two of this [~~chapter~~] **title** will not be violated if financial assistance **or payments in lieu of taxes** is provided for the proposed project;

(h) a statement that the owner, occupant or operator receiving financial assistance **or payments in lieu of taxes** is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations; and

(i) a statement acknowledging that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any financial assistance **or payments in lieu of taxes** and the reimbursement of an amount equal to all or part of any tax exemptions claimed by reason of agency involvement in the project.

5. Each agency shall develop, and adopt by resolution, uniform criteria for the evaluation and selection for each category of projects for which financial assistance **or payments in lieu of taxes** will be provided. At a minimum, the criteria shall require that, for each project, the following must occur prior to the approval of the provision of financial assistance **or payments in lieu of taxes**:

(a) an assessment by the agency of all material information included in connection with the application for financial assistance **or payments in lieu of taxes**, as necessary to afford a reasonable basis for the decision by the agency to provide financial assistance **or payments in lieu of taxes** for the project;

(b) a written cost-benefit analysis by the agency that identifies the extent to which a project will create or retain permanent, private sector jobs; the estimated value of any tax exemptions to be provided; the amount of private sector investment generated or likely to be generated by the proposed project; the contribution of the project to the state's renewable energy goals and emission reduction targets as set forth in the state energy plan adopted pursuant to section 6-104 of the energy law; the likelihood of accomplishing the proposed project in a timely fashion; and the extent to which the proposed project will provide additional sources of revenue for municipalities and school districts; and any other public benefits that might occur as a result of the project;

(c) a statement by the applicant that the project, as of the date of the application, is in substantial compliance with all provisions of this article including, but not limited to, the provisions of this section and subdivision one of section eight hundred sixty-two of this [~~chapter~~] **title**; and

(d) if the project involves the removal or abandonment of a facility or plant within the state, notification by the agency to the chief executive officer or officers of the municipality or municipalities in which the facility or plant was located.

6. Each agency shall develop a uniform agency project agreement that sets forth terms and conditions under which financial assistance **or payments in lieu of taxes** shall be provided. The uniform agency project agreement shall be used by the agency and no financial assistance **or payments in lieu of taxes** shall be provided in the absence of the execution of such an agreement. The uniform agency project agreement shall, at a minimum:

(a) describe the project and the financial assistance **or payments in lieu of taxes**, including the amount and type, to be provided, and the agency purpose to be achieved;

(b) require each project owner, occupant or operator receiving financial benefits **or payments in lieu of taxes** to provide annually a certified statement and documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the financial assistance **or payments in lieu of taxes**, by category, including full time equivalent independent contractors or employees of independent contractors that work at the project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created[~~.~~]**;**

(c) indicate the dates when PILOT payments are to be made and provide an estimate of the amounts for each affected tax jurisdiction of any payments in lieu of taxes that are included as part of the transaction, or formula or formulas by which those amounts may be calculated. In lieu of providing such information, a copy of an executed payment in lieu of tax agreement that contains the same information may be attached to the uniform agency project agreement;

[~~(e)~~] (d) provide for the suspension or discontinuance of financial assistance or payments in lieu of taxes, or for the modification of any payment in lieu of tax agreement to require increased payments, in accordance with policies developed by the agency pursuant to section eight hundred seventy-four of this title;

[~~(f)~~] (e) provide for the return of all or a part of the financial assistance or payments in lieu of taxes provided for the project, including all or part of the amount of any tax exemptions, which shall be redistributed to the appropriate affected tax jurisdiction, as provided for in policies developed by the agency pursuant to section eight hundred seventy-four of this title, unless agreed to otherwise by any local taxing jurisdiction or jurisdictions; and

[~~(g)~~] (f) provide that the owner, occupant or operator receiving financial assistance or payments in lieu of taxes shall certify, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

§ 4. The general municipal law is amended by adding a new section 859-c to read as follows:

§ 859-c. Notice of agenda. A printed calendar of items to be heard, which may be subject to later amendment, shall be made available to the public and forwarded to the members and chairman of the industrial development agency at least three days in advance of the meeting. Where an industrial development agency maintains a website, the notice of agenda shall also be posted on such industrial development agency's website.

§ 5. The general municipal law is amended by adding a new section 859-d to read as follows:

§ 859-d. School board reporting. Every industrial development agency, continued or created by this chapter or any other law of the state shall submit to the local school board president and superintendent or boards presidents and superintendents overlapping with an industrial development agency, within ninety days after the end of its fiscal year, a copy of the final report required by subdivision two of section twenty-eight hundred of the public authorities law and the audits required by subdivision two of section twenty-eight hundred two of the public authorities law.

§ 6. This act shall take effect immediately.