

STATE OF NEW YORK

9287

IN SENATE

May 9, 2024

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts

AN ACT to amend the state finance law, in relation to comprehensive delivery; to amend the public authorities law, in relation to any development entity for the purposes of development or operation of an approved project for the purposes of comprehensive delivery; and to amend the local finance law, in relation to a municipality, school district or district corporation having the power to contract indebtedness for the purposes of implementing the provisions of article nine-A of the state finance law

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

1 Section 1. Legislative intent. The legislature hereby finds and
2 declares that there is a public need to accelerate delivery of energy
3 and infrastructure improvements to address critical needs of the state
4 and its political subdivisions, including: (i) achieving net zero emis-
5 sions state-wide by 2050; (ii) rapid development of affordable homes,
6 educational facilities and housing and access to high-speed broadband
7 internet; (iii) replenishment and improvement of core transportation,
8 aviation, transit and vertical infrastructure; (iv) clean water and
9 efficient sewer systems and waste technologies; (v) climate change miti-
10 gation and flood and grid resiliency; (vi) generating and enhancing
11 pro-labor jobs and attracting new talent to New York; (vii) bolstering
12 global investment and development in New York; (viii) increasing oppor-
13 tunities for small, minority-owned, women-owned and serviced disabled
14 veteran owned businesses; (ix) fully unlocking and enabling accelerated
15 access to federal funding for energy and infrastructure projects; and
16 (x) addressing the deferred maintenance crisis across New York's infras-
17 tructure. Authorizing a consolidated delivery approach that allows for
18 one or more of design, construction, finance, operations and/or mainte-
19 nance under a single contract can, where appropriate, more rapidly and
20 cost effectively result in the achievement of each of the foregoing
21 objectives and unlock access to federal capital requiring such statutory
22 authorization.

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

LBD15174-03-4

1 § 2. The state finance law is amended by adding a new article 9-A to
2 read as follows:

3 ARTICLE 9-A
4 COMPREHENSIVE DELIVERY

5 Section 149. Definitions.

6 149-a. Enabling authority.

7 149-b. Procurement.

8 149-c. Project funding.

9 149-d. Labor and public interest protections.

10 149-e. Comprehensive agreements.

11 149-f. Construction.

12 149-g. Severability.

13 § 149. Definitions. As used in this article, the following terms shall
14 have the following meanings:

15 1. "Authorized project" means infrastructure delivered under an inter-
16 im agreement and/or comprehensive agreement between a public entity and
17 a development entity consolidating at least two or more of design,
18 construction, finance, operations and/or maintenance work, including
19 construction manager or construction manager at risk under this article;

20 2. "Comprehensive agreement" means an agreement between a development
21 entity and a public entity for the delivery of an authorized project,
22 including at least those required provisions under this article;

23 3. "Infrastructure" means physical structures, improvements, equipment
24 and/or facilities, including any digital infrastructure, which support a
25 public purpose or objective of a public entity;

26 4. "Interim agreement" means the interim agreement, including a pre-
27 development agreement or memorandum of understanding or other binding
28 preliminary agreement, that may be entered into between the development
29 entity and the public entity pursuant to this article;

30 5. "Development entity" means any natural person, corporation, part-
31 nership, limited liability company including a special purpose vehicle,
32 joint venture, not-for-profit corporation or other business entity;

33 6. "Public entity" means the state and any agency, department or
34 authority thereof, any county, city, town, village or school district
35 and any other political subdivision, institution of higher education,
36 agency, corporation, instrumentality or authority of, or established by,
37 any of the foregoing; and

38 7. "Revenues" means all revenues, including, but not limited to,
39 income, earnings, interest payments, user fees, lease payments, allo-
40 cations, federal, state, regional and local appropriations or the appro-
41 priations or other funds available to any public entity, bond proceeds,
42 equity investments and/or service payments arising out of or in
43 connection with supporting the development and/or operation of a author-
44 ized project, including without limitation, money received as grants or
45 otherwise from the United States of America, from any public entity, or
46 from any agency or instrumentality of the foregoing in aid of such
47 facility.

48 § 149-a. Enabling authority. Subject to subdivision four of this
49 section, where it is determined by a public entity to be in the public
50 interest to pursue an authorized project, notwithstanding any law, rule,
51 or regulation to the contrary and in lieu of any other procurement or
52 acquisition process that may apply to an authorized project, such public
53 entity is authorized to:

54 1. establish necessary and appropriate procurement and delivery inter-
55 nal control policies, procedures, or guidelines to efficiently deliver
56 an authorized project. Such policies, procedures or guidelines must also

1 ensure open, competitive, transparent and robust selection basis of any
2 development entity for an authorized project;

3 2. enter into interim agreements, comprehensive agreements or any
4 other document or instrument that may be necessary or convenient to
5 deliver an authorized project pursuant to this article;

6 3. dedicate, make available, or convey any real, personal, tangible,
7 intangible and property interest that it has to a development entity for
8 an authorized project;

9 4. exercise governmental authorities or powers to support the delivery
10 of an authorized project; and

11 5. enable a development entity to perform under the terms of a compre-
12 hensive agreement, and subject to the limitations under this article,
13 functions normally undertaken by the government.

14 § 149-b. Procurement. 1. The public entity may hold one-on-one colla-
15 borative dialogue meetings with development entities during a procure-
16 ment for an authorized project to negotiate individually with each
17 development entity the terms of an interim and comprehensive agreement.

18 2. Any materials or data submitted to, made available to, or received
19 by the public entity, may be held confidential and not public record
20 until such time as a preferred proposer is awarded or the procurement is
21 terminated.

22 3. The public entity may receive, consider, evaluate and accept an
23 unsolicited proposal for an authorized project if the proposal addresses
24 the needs of a public entity and such public entity has published a
25 policy or procurement regulation for unsolicited proposals.

26 4. The public entity is authorized to pay, in exchange for receipt of
27 intellectual property from a proposer, a stipend to an unsuccessful
28 proposer or a proposer in a cancelled procurement for an authorized
29 project, in an amount and the terms determined appropriate by the public
30 entity.

31 5. The public entity may retain, by means of competitive negotiation
32 consultants and experts inside and outside the public sector to assist
33 in the procurement, evaluation, contracting, managing and negotiation of
34 authorized projects under this article.

35 6. The public entity may select a preferred proposer to serve as the
36 development entity for an approved project through a single or multi-
37 step procurement process on a best value basis.

38 7. For all infrastructure projects in excess of two hundred million
39 dollars (as adjusted by the consumer price index annually), all public
40 entities must conduct an assessment, which may be a value for money
41 assessment or equivalent, that quantitatively and qualitatively assesses
42 the most appropriate delivery model for such infrastructure project
43 comparing the cost, price, schedule, quality, long-term operations and
44 maintenance costs, future revenue streams to fund such infrastructure,
45 and relative benefits and challenges of design-bid-build procurement
46 methods to those authorized by this section.

47 § 149-c. Project funding. 1. Any lawful source of funding, revenue and
48 financing may be utilized by a public entity and development entity for
49 the development, maintenance and operations of an authorized project and
50 a public entity is authorized to pay a development entity a payment for
51 the availability of an authorized project, where such availability
52 payment is performance based and decreases where a development entity
53 fails to perform in accordance with a comprehensive agreement. Any
54 public entity may authorize a development entity to perform any one or
55 more of the following: setting rates, collecting revenues, enforcing
56 collection, or retaining revenues from third parties and the general

1 public for the use of an authorized project, all of which will be
2 subject to limitations, constraints and parameters established by the
3 public entity in a comprehensive agreement. The comprehensive agreement
4 will prescribe the extent to which any such rates are subject to the
5 public entity's oversight and approval. A public entity may compensate a
6 development entity under an interim agreement for work performed and
7 work product produced.

8 2. The public entity may accept from any source any grant, donation,
9 gift, or other form of conveyance of land, money, other real or personal
10 property or other valuable thing made to the public entity for carrying
11 out the purposes of this article and may transfer such property to a
12 development entity under a comprehensive agreement.

13 3. Any comprehensive agreement may be for a term deemed reasonably
14 appropriate by a public entity to achieve the purpose of this article.

15 § 149-d. Labor and public interest protections. The intent of this
16 article is to enhance opportunities and improve wages for New York state
17 public and private sector labor participants.

18 1. Notwithstanding any provision of law to the contrary, all rights or
19 benefits, including terms and conditions of employment, and protection
20 of civil service and collective bargaining status of all employees of
21 existing state agencies and public authorities affected by the
22 provisions of this article, shall be preserved and protected. Nothing in
23 this article shall result in: the displacement of any currently employed
24 public employee or loss of position, including partial displacement such
25 as a reduction in the hours of non-overtime work, wages or employment
26 benefits, on an existing asset or result in the impairment of existing
27 collective bargaining agreements with respect to existing assets; or the
28 transfer of existing duties and functions currently performed by employ-
29 ees of existing state agencies or public authorities, in each case, on
30 existing assets, affected by the provisions of this article to a devel-
31 opment entity. Employees serving in positions in newly created titles
32 shall be assigned to the appropriate bargaining unit. Nothing in this
33 article shall be construed to affect:

34 (a) the existing rights of employees pursuant to an existing collec-
35 tive bargaining agreement; or

36 (b) the existing representational relationships among employee organ-
37 izations or the bargaining relationships between the employer and an
38 employee organization.

39 2. Every development entity which enters into an interim agreement or
40 comprehensive agreement pursuant to this article shall be subject to the
41 labor law requirements and minority and women owned business enterprise
42 requirements for design and construction provided under the New York
43 State Infrastructure Investment Act, as amended, for authorized projects
44 outside of New York city and the New York City Public Works Investment
45 Act, as amended, for authorized projects procured by the city of New
46 York as well as the following:

47 (a) the provisions of article eight of the environmental conservation
48 law;

49 (b) the provisions of all state and federal laws prohibiting discrimi-
50 nation and requiring the provision of equal employment opportunity;

51 (c) the provisions of article six of the public officers law post-a-
52 ward of an authorized project; and

53 (d) any other consistent local and state law and any applicable feder-
54 al law, rules and regulations which are otherwise required by law in
55 connection with the performance of public work and the work to which the
56 authorized project relates.

1 § 149-e. Comprehensive agreements. 1. A comprehensive agreement under
2 this section may provide, including but not limited to:

3 (a) planning, acquisition, financing, development, design,
4 construction, reconstruction, replacement, financing, improvement, main-
5 tenance, life-cycle work, management, repair, leasing and/or operation
6 of qualifying public infrastructure;

7 (b) payment of long-term performance-based payments and/or
8 construction milestone payments;

9 (c) requirements regarding setting, collecting, retaining, sharing and
10 enforcing user fees or rents;

11 (d) terms and conditions of indemnification of the development entity
12 by the public entity;

13 (e) a lease, license, or conveyance of a real, personal or intangible
14 property interests;

15 (f) appropriately sizing any performance and payment bonds relative to
16 the overall security package for the approved project;

17 (g) the provision of insurance policies either through the development
18 entity and/or the public entity;

19 (h) a security interest by the lenders in the comprehensive agreement
20 and the right of the development entity to pledge its interests and
21 revenues under the comprehensive agreement for the benefit of its lend-
22 ers;

23 (i) step-in rights for the public entity upon a default of the devel-
24 opment entity;

25 (j) enforcement and other policing issues, including any reimbursement
26 by the development entity for such services;

27 (k) provisions allowing the development entity or the public entity to
28 act on each other's behalf in acquiring parcels, including through
29 condemnation, required for the approved project; and

30 (l) any other provision deemed reasonably necessary to serve the
31 public purpose under this article.

32 2. A comprehensive agreement under this section shall provide for:

33 (a) appropriate and balanced risk allocation to maximize best value
34 for the approved project;

35 (b) a specific plan, where applicable, to ensure proper maintenance of
36 the qualifying public infrastructure throughout the term of the compre-
37 hensive agreement and a return of the infrastructure to the responsible
38 public entity, if applicable, in a specified condition in the comprehen-
39 sive agreement;

40 (c) compliance with applicable law and this article;

41 (d) grounds for default and termination and authorization of payment
42 of termination compensation;

43 (e) a date for completion of the applicable work required to deliver
44 the authorized project; and

45 (f) review and approval by the public entity of the development enti-
46 ty's plans and performance of the development and maintenance of the
47 authorized project.

48 3. The comprehensive agreement may provide for the development and/or
49 operation of phases or segments or multiple bundled projects under a
50 single comprehensive agreement.

51 4. Notwithstanding any other provision of law, the responsible public
52 entity may agree to or require use of arbitration or other alternative
53 dispute resolution procedures to resolve disputes with the development
54 entity.

55 5. Development entities shall not be subject to article one hundred
56 forty-five of the education law, provided, however all professional

1 services rendered by a development entity must be performed by licensed
2 persons as required under article one hundred forty-five of the educa-
3 tion law.

4 6. While public funding can be used to support payments under a
5 comprehensive agreement, the full faith and credit of the public entity
6 shall not be pledged to secure any financing of the development entity
7 by the election to take over the qualifying public infrastructure and
8 such availability or service payments shall not be treated as debt of
9 any public entity and no financing of a development entity will be
10 considered debt of any public entity and must be non-recourse to a
11 public entity.

12 7. In the event of termination of a comprehensive or interim agree-
13 ment, the authority and duties of the development entity shall cease,
14 except for any duties and obligations that extend beyond the termination
15 as provided in the comprehensive or interim agreement, and the qualify-
16 ing public infrastructure reverts to the public entity and shall be
17 dedicated to the public entity for public use.

18 § 149-f. Construction. The provisions of this article which are incon-
19 sistent with any other provision of state law shall be deemed to super-
20 seede such provision of law, and the provisions of this article shall be
21 controlling.

22 § 149-g. Severability. If any clause, sentence, paragraph, section or
23 part of this article shall be adjudged by any court of competent juris-
24 isdiction to be invalid and after exhaustion of all further judicial
25 review, the judgment shall not affect, impair or invalidate the remain-
26 der thereof, but shall be confined in its operation to the clause,
27 sentence, paragraph, section or part of this article directly involved
28 in the controversy in which the judgment shall have been rendered.

29 § 3. Paragraph (b) of subdivision 2 of section 1676 of the public
30 authorities law is amended by adding a new undesignated paragraph to
31 read as follows:

32 Any development entity for the purposes of development or operation of
33 an approved project pursuant to article nine-A of the state finance law.

34 § 4. Subdivision 1 of section 1680 of the public authorities law is
35 amended by adding a new undesignated paragraph to read as follows:

36 Any development entity for the purposes of development or operation of
37 an approved project pursuant to article nine-A of the state finance law.

38 § 5. The opening paragraph of section 10.00 of the local finance law
39 is designated subdivision 1 and a new subdivision 2 is added to read as
40 follows:

41 2. A municipality, school district or district corporation shall have
42 the power to contract indebtedness for the purposes of implementing the
43 provisions of article nine-A of the state finance law.

44 § 6. This act shall take effect immediately.