

# 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.

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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.