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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

OSC No. 41

MEMORANDUM  
RE  
AN ACT

to amend the general municipal law, in relation to the accountability and efficiency of industrial development agencies and authorities

PURPOSE: To increase the accountability and improve the efficiency and transparency of the operations of industrial development agencies and authorities (IDAs) by requiring standard application forms for requests for financial assistance, uniform criteria for the evaluation and selection for each category of projects for which financial assistance is provided, and uniform project agreements.

SUMMARY OF PROVISIONS: Section one of the bill would add three new subdivisions to General Municipal Law §859-a:

Standard application form – A new subdivision four would added to General Municipal Law §859-a to require each IDA to develop a standard application form for requests for financial assistance from IDAs. The form would be submitted by or on behalf of the applicant, and subscribed and affirmed under penalties of perjury as true, accurate and complete. The form would be required to contain certain information including, among other things: the name and address of the applicant; a description of the proposed project; the amount and type of financial assistance requested; an estimate of capital costs of the project; the projected number of full time equivalent jobs that would be retained or created if the request for financial assistance is granted as well as certain other information relating to those jobs; and a statement acknowledging that the submission of any knowingly false or misleading information may lead to immediate termination of any financial assistance and reimbursement of an amount equal to all or part of any tax exemptions claimed as a result of the project. The IDA could require supplemental information as it determines to be necessary and appropriate, including supporting documents and information provided by or on behalf of the applicant.

Uniform evaluation criteria – A new subdivision five would be to General Municipal Law §859-a to require each IDA to develop, and adopt by resolution, uniform criteria for the evaluation and selection of each category of projects for which financial assistance would be provided. At minimum, the criteria would require, among other things, that, prior to the approval of the provision of any financial assistance, the IDA:

assess all material information included in connection with the application, as necessary to afford a reasonable basis for its decision to provide financial assistance; and undertake a written cost-benefit analysis 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 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.

Uniform project agreement – A new subdivision six would be added to General Municipal Law §859-a to require each IDA to develop a uniform IDA project agreement, that would set forth the terms and conditions under which financial assistance would be provided. The uniform agreement would be required to contain certain provisions, including: a description of the project and financial assistance; a requirement for an annual certification by the project owner, occupant or operator of full time equivalent jobs created and retained as a result of the financial assistance; the dates when payments in lieu of tax (PILOT) payments are to be made and an estimate of the amounts or formula(s) by which those amounts are calculated made (or a copy of an executed PILOT agreement); a provision for the suspension or discontinuance of financial assistance, or for the modification of any payment in lieu of tax agreement to require increased payments, in accordance with policies developed by the IDA; a provision for the return of all or a part of the financial assistance provided for the project, as provided for in policies developed by the IDA; and a provision that the business 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.

Section two of the bill would add three new subdivisions to section 874 of the General Municipal Law to require each IDA to: (1) develop policies for the suspension or discontinuance of financial assistance, or for the modification of any payment in lieu of tax agreement to require increased payments under specified circumstances: (2) develop policies for the return of all or a part of the financial assistance provided for a project, including all or part of the amount of any tax exemptions, as specified in the policy. All such returned amounts of tax exemptions would be required to be redistributed to the appropriate affected tax jurisdiction, unless agreed to otherwise by any local taxing jurisdiction: and (3) at least annually assess the progress of each project toward achieving the investment, job retention or creation, or other objectives of the project indicated in the project application. These assessments would be required to be provided to board members.

Section three of the bill would provide that the act take effect 180 days after it shall have become law. It would further provide that that the bill would apply in full force and effect to the Cities of Troy and Auburn Industrial Development Authorities established pursuant to the Public Authorities law. New subdivision 12 that would be added to General Municipal Law §874 would apply to projects approved on or after the effective date of the bill.

JUSTIFICATION: IDAs are public benefit corporations, created by special act of the State Legislature for the benefit of one or more municipalities and the inhabitants thereof. Article 18-A of the General Municipal Law provides that the purposes of IDAs are to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation and certain other listed facilities, and thereby advance 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.

To fulfill their statutory purposes, IDAs are authorized to provide “financial assistance” for certain types of “projects” (see e.g. General Municipal Law §§ 854 [4], [14], 859 [1] [b], 864, 874). “Financial assistance” includes the issuance of bonds by the IDA to finance construction of a project and “straight-lease transactions.” Since the property and activities of IDAs are tax exempt (General Municipal Law §874; Real Property Tax Law §412-a), the IDA may “pass through” the benefits of certain tax exemptions (real property, sales, mortgage recording taxes) to private entities which undertake projects. The “pass through” can be in addition to bond financing, or done separately, generally through what is known as a “straight- lease transaction.” The loss of revenue associated with the tax exemption pass-through can be mitigated if the IDA enters into what is known as a “payment in lieu of tax” or “PILOT” agreement with the private entity, under which the private entity agrees to pay all or a portion of the amounts that would otherwise be due as taxes had the project not been an IDA project. In addition, after the project is completed, and the IDA relinquishes title, jurisdiction, control or supervision of the property, the property usually becomes taxable and its assessed value is often increased to account for improvements made during the period of IDA involvement.

Because of reform legislation enacted in 1993 (Chapter 356), IDAs are required to have budgets, conduct public hearings before providing financial assistance for most projects and have “uniform tax exemption policies.” In addition, IDAs can lose their authority to offer financial assistance in the form of State tax exemptions if they fail to file the required annual audited financial statement (General Municipal Law §859). Also, the Public Authorities Accountability Act of 2005 (Chapter 766) and the Public Authorities Reform Act of 2009 (Chapter 506) added requirements for governance, reporting, auditing and property disposition that will enhance IDA accountability. While these changes have been positive steps toward making IDAs more accountable to the municipalities and taxpayers for whose benefit they are created, there remain areas where improvements are necessary, especially in light of the critical role IDAs often play in the economic well-being of a community and the potential costs in lost tax revenues.

This bill would provide for additional safeguards to help ensure that the process used by IDAs in determining to provide financial assistance is transparent, uniform and deliberative, and furthers the underlying purposes of the statutes governing IDAs.

Current law does not spell out an orderly procedure by which an individual or entity may request financial assistance from an IDA, or by which an IDA grants such assistance or monitors projects after assistance is provided. Instead, audits conducted by OSC have shown that the process is too often ad hoc and inconsistent from IDA to IDA, and even from project to project within an individual IDA. By the same token, several audits found that some IDAs were performing effectively and noted certain best practices. Some of the provisions of this bill were drawn from those best practices.

This bill would require standard application forms for those requesting IDA financial assistance and would require IDAs to develop uniform criteria for assessing applications. Pursuant to these new requirements, the types of information IDAs would receive for each project would be more standardized and the process used to evaluate each application should be consistent and thorough. This should lead to a more uniform and transparent process, more informed decision-making by IDAs and increased confidence by taxpayers that decisions to provide financial assistance are reasoned and in furtherance of the underlying purposes of IDAs, including the creation and retention of jobs within the municipality for whose benefit the IDA was created.

Also, each IDA project would be undertaken pursuant to a uniform project agreement that would set forth the terms and conditions under which financial assistance would be provided. It would provide a mechanism to help ensure that the IDA can monitor the progress of the projects, including whether jobs created or retained as a result of the project meet initial projections. To help ensure that the affected tax jurisdictions do not suffer a loss of tax revenues for projects that do not meet job creation and retention goals or in other specified circumstance, the agreement would provide for the suspension or discontinuance of financial assistance, or for the modification of PILOT agreements, in accordance with policies developed by the IDA. In addition, the agreement would provide for the return of all or part of financial assistance as provided for IDA policies. Correspondingly, IDAs would be required to develop such policies, setting forth circumstances when there would be a suspension or discontinuance of financial assistance, or the return of such assistance.

We believe this bill will greatly increase the accountability of IDAs to the taxpayers and municipalities for whose benefit they are created. It will serve to ensure a greater degree of uniformity in the application process for IDA assistance, more careful analysis and deliberation in the decision-making process and enhanced monitorship once IDA benefits are conferred.

The Comptroller urges passage of this legislation.

PRIOR LEGISLATIVE HISTORY: New bill.

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act shall take effect 180 days after it shall have become a law and, shall apply to industrial development agencies created pursuant to article 18-A of the

general municipal law and shall also apply with full force and effect to the cities of Troy and Auburn industrial development authorities established pursuant to the public authorities law; provided, however, the provisions of subdivision 12 of section 874 of the general municipal law as added by section 2 of this act shall apply only to projects approved on or after the effective date of this act.