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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

OSC No. 1

MEMORANDUM
RE
AN ACT

to amend the general municipal law, in relation to audits by the state comptroller of certain organizations controlled by municipal corporations and certain other government entities

PURPOSE: To authorize the State Comptroller to audit private organizations controlled by local government entities.

SUMMARY OF PROVISIONS: Section 1 of this bill amends section 34 of the General Municipal Law to authorize the State Comptroller to examine the financial affairs of any organization (other than a statewide association of local governments or local government officials) that is under the control of one or more local government entities, including municipal corporations, school districts, fire districts and industrial development agencies. An organization would be deemed "under the control" of a local government entity when one or more individuals who serve as officers or employees of the local government entity (a) select either a majority of the organization's highest policy-making body or the organization's chief executive officer; (b) constitute a majority of the voting strength that selects either a majority of the organization's highest policy-making body or the organization's chief executive officer; or (c) serve as (i) a majority of the organization's highest policy-making body; (ii) the organization's chief executive officer in his or her official capacity; or (iii) a partner in the organization in his or her official capacity. The phrase "a majority of the organization's highest policy-making body" would mean a majority of the whole number of positions comprising such body, unless such body is allowed to act by a majority of a quorum, in which case the term would mean a majority of the quorum. Subsidiaries and other entities controlled by the organization would also be covered.

Section 2 of this bill provides that this act would take effect immediately.

PRIOR LEGISLATIVE HISTORY:

S. 7907 (Passed Senate) and A. 11088 of 2009-2010

S. 7540 and A. 9689 (Passed Assembly) of 2011-2012

S.4497 and A.3633 (Passed Assembly) of 2013-2014

JUSTIFICATION: Local development corporations, as well as certain other types of private organizations (e.g., limited liability companies), have been utilized by counties, cities, towns, villages, and other local governments, such as fire districts, as a means to indirectly finance local government operations and projects. Audits performed by the State Comptroller's Office have found these private entities have been used to avoid constitutional or statutory provisions that apply to projects undertaken directly by a local government entity (e.g. the prohibition on gifts and loans to or in aid of private entities in Article VIII, §1 of the State Constitution; referendum requirements such as those in the Local Finance Law applicable to certain municipal bond resolutions; the competitive bidding requirements of Article 5-A of the General Municipal Law; and limitations on the issuance of debt such as those contained in Article VIII, §4 of the State Constitution).

Currently, the State Comptroller does not have the authority to audit directly local development corporations and other similar types of private organizations, even when they are controlled by a local government entity. Instead, the Comptroller may only examine the relationship between the local government entity and the private organization as part of an audit of the local government entity. And even in the context of such an audit, the Comptroller generally may not look beyond the financial or business relationship to examine the overall finances and operations of the private organization itself. Thus, for example, the Comptroller may be unable to examine a private organization's internal controls to assess whether moneys provided to the organization by a local government entity are properly safeguarded.

While local development corporations and other similar types of private organizations are established to be legally separate from the local government entity, as a practical matter, they often function as if they are instrumentalities of local government entities. The bill would recognize this reality and expand the Comptroller's audit authority commensurately to include direct audits of private organizations which are under the control of one or more local government entities. Such audits would provide greater assurance that these organizations are operating in the public interest.

The bill's definition of "under the control" is necessary to ensure that the Comptroller's audit authority is based on the substance, rather than the form, of the relationship between the local government entity and the private organization. To avoid creating incentives or disincentives to the use of any particular type of private organization, this bill would apply to every type of organization under the control of a municipal corporation or other local government entity that is not already subject to audit by the Comptroller, except a statewide association of local governments or local government officials.

BUDGET IMPLICATIONS: This bill has no significant fiscal impact. The fiscal impact of the bill is limited to organizations actually audited by the Comptroller and confined to

the staff time and other resources required to cooperate with the auditors. Any such impact would be offset by potential savings based upon the audit findings.

EFFECTIVE DATE: This bill would take effect immediately.