



**ONONDAGA COUNTY**  
INDUSTRIAL DEVELOPMENT AGENCY

# HANDBOOK

## TABLE OF CONTENTS

<u>TOPIC</u>	<u>PAGE(S)</u>
1. MISSION STATEMENT	1-1
2. CALENDAR FOR 2024	2-1
3. AGENCY MEMBERSHIP	3-1
4. BYLAWS	4-1
5. CHARTERS	
A. Audit Committee	5-A.1
B. Governance Committee	5-B.1
C. Finance Committee	5-C.1
6. CODE OF ETHICS	
a. Onondaga County Industrial Development Agency	6-A.1
b. County of Onondaga	6-B.1
c. County of Onondaga Annual Financial Disclosure	6-C.1
d. Certificate of No Conflict	6-D.1
e. Certificate of Independence	6-E.1
7. STATUTORILY REQUIRED POLICIES	
a. Compensation, Reimbursement, and Attendance Policy	7-A.1
b. Indemnification Policy	7-B.1
c. Investment Policy	7-C.1
d. Procurement Policy	7-D.1
e. Property Disposition Guidelines	7-E.1
f. Travel Policy	7-F.1
g. Uniform Tax Exemption Policy	7-G.1
h. Whistle Blower Policy	7-H.1
8. OTHER POLICIES & SUMMARIES	
POLICIES	
a. Annual Public Authority Accountability Act Requirements	8-A.1
b. Executive Session Summary	8-B.1
c. Freedom of Information Act Policy (FOIL)	8-C.1
d. Inducements to Prospects	8-D.1
e. Legal Fee Policy	8-E.1
f. Local Access Policy	8-F.1

g.	Tax Exempt, Taxable & Straight Lease Transactions	8-G.1
h.	Term of Project Approvals	8-H.1
i.	Open Meeting Law Summary	8-I.1
j.	Public Hearings Summary	8-J.1
k.	SEQR Process Summary	8-K.1

9.	FEE STRUCTURE & FEES	9-1
----	----------------------	-----

10. APPENDICES

A.	Article 7 of the Public Officers Law	A-1
B.	Article 9 of the Public Authority Law	B-1
C.	Article 18 of the General Municipal Law	C-1
D.	Article 18A of the General Municipal Law	D-1



## **MISSION STATEMENT**

To stimulate economic development, growth, and general prosperity for the people of Onondaga County by using available incentives, rights and powers in an efficient and cooperative manner.

## 2024 Meeting Schedule

Date	Time	Type	Location
January 18, 2024 - Thursday	8:30 AM	Organizational Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
January 18, 2024 – Thursday	8:30 AM	Governance Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
January 18, 2024 – Thursday	8:30 AM	Regular Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
February 8, 2024 – Thursday	8:30 AM	Regular Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
March 14, 2024 – Thursday	8:30 AM	Annual Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
March 14, 2024 – Thursday	8:30 AM	Audit Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
March 14, 2024 – Thursday	8:30 AM	Regular Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
April 11, 2024 - Thursday	8:30 AM	Regular Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
May 9, 2024 - Thursday	8:30 AM	Regular Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
June 13, 2024 – Thursday	8:30 AM	Regular Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
July 18, 2024 – Thursday	8:30 AM	Finance Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
July 18, 2024 - Thursday	8:30 AM	Regular Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
August 8, 2024 – Thursday	8:30 AM	Regular Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
September 12, 2024 -Thursday	8:30 AM	Regular Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
October 10, 2024 – Thursday	8:30 AM	Audit Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
October 10, 2024 – Thursday	8:30 AM	Finance Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
October 10, 2024 - Thursday	8:30 AM	Regular Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
November 14, 2024–Thursday	8:30 AM	Governance Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
November 14, 2024-Thursday	8:30 AM	Regular Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor
December 12, 2024 - Thursday	8:30 AM	Regular Meeting	335 Montgomery St., 2 <sup>nd</sup> Floor



**MEMBER AND STAFF LIST**

**Members**

Patrick Hogan: Chairperson  
Janice Herzog: Vice Chairperson  
Susan Stanczyk  
Kevin Ryan  
Fanny Villarreal  
Cydney Johnson  
Elizabeth Dreyfuss

**Governance Committee**

Kevin Ryan-Chair  
Fanny Villarreal  
Patrick Hogan

**Audit Committee**

Janice Herzog – Chair  
Cydney Johnson  
Patrick Hogan

**Finance Committee**

Susan Stanczyk-Chair  
Elizabeth Dreyfuss  
Patrick Hogan

**Freedom of Information Act Officer**

Robert M. Petrovich

**Freedom of Information Act Appeals Officer**

Patrick Hogan

**State Finance Law (Procurement) Contact Person**

Robert M. Petrovich

**Staff**

Robert M. Petrovich – Executive Director  
Nathaniel Stevens– Treasurer  
Alexis Rodriguez – Secretary  
Karen Doster – Recording Secretary

r

**Contact Information**

335 Montgomery Street, Floor 2M  
Syracuse, NY 13202  
Phone: 315-435-3770  
Fax: 315-435-3669



**RESTATED BYLAWS  
OF  
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**ARTICLE I  
THE AGENCY**

Section 1. **Name**. The name of the Agency shall be "Onondaga County Industrial Development Agency."

Section 2. **Seal of Agency**. The seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its organization.

Section 3. **Office of Agency**. The office of the Agency shall be at the Onondaga County 333 W. Washington Street, Suite 130, Syracuse, New York, or at such other address in the County of Onondaga as shall be determined by the Agency from time to time.

**ARTICLE II  
OFFICERS**

Section 1. **Officers**. The officers of the Agency shall be a Chairman, a Vice Chairman, an Executive Director, a Secretary, and a Treasurer.

Section 2. **Chair**. The Chairman shall be a member of the Agency and preside at all meetings of the Agency. The Chairman shall submit recommendations and such information as deemed pertinent concerning the business, affairs and policies of the Agency at each meeting. The Chairman shall appoint committee members and assign a chair for each committee.

Section 3. **Vice Chairman**. The Vice Chairman shall be a member of the Agency and perform the duties of the Chairman in the absence or incapacity of the Chairman. In the event of the resignation, removal or death of the Chairman, the Vice Chairman shall automatically succeed to the office of the Chairman and serve for the unexpired term of such office. In the event that the office of Vice Chairman is vacant, the Board shall select the Chairman to fill out the unexpired term.

Section 4. **Secretary**. The Secretary may, but need not be, a member of the Agency. The Secretary shall keep all records of the Agency, shall act as Secretary at the meetings of the Agency, shall keep a record of all votes, shall record the proceedings of the Agency in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to this office. The Secretary shall have custody of the seal of the Agency

and the power to affix such seal to all agreements, contracts, deeds, bonds or other evidences of indebtedness and all other instruments of the Agency authorized by the Agency to be executed and the power to attest (by manual or facsimile signature) such seal. The Secretary may, in her discretion, delegate some or all of the Secretary's duties to the Assistant Secretary.

Section 6. **Treasurer.** The Treasurer shall not be a member of the Agency. The Treasurer shall be the Chief Financial Officer of the Agency. He shall have the care and custody of all funds of the Agency and shall deposit all such funds in the name of the Agency as the Agency may designate. Except as otherwise authorized by resolution of the Agency, the Treasurer shall sign all checks for the payment of money by the Agency pursuant to the direction of the Agency. Except as otherwise authorized by resolution of the Agency, all such checks shall be countersigned by the Chairman, the Vice-Chairman or the Executive Director. The Treasurer shall keep regular books of accounts showing receipts and expenditures. The Treasurer shall render to the Agency at each regular meeting an account of the financial transactions and the current financial condition of the Agency.

Section 7A. **Executive Director.** The Executive Director shall be the Chief Executive Officer of the Agency and shall not be a member of the Agency. The Executive Director shall be the Onondaga County Director of Economic Development, a position that is appointed by the Onondaga County Executive and confirmed by affirmative vote of the Onondaga County Legislature. The Executive Director shall have general supervision over the administration of the business and affairs of the Agency, subject to the direction of the Agency. The Executive Director shall be charged with the management of all projects of the Agency. The Executive Director shall sign (manually or by facsimile signature) all agreements, contracts, deeds, bonds or other evidence of indebtedness and any other instruments of the Agency on behalf of the Agency, except as otherwise authorized or directed by resolution of the Agency.

Section 8. **Additional Duties.** In the absence or incapacity of the Treasurer, the other officers of the Agency shall have the care and custody of all funds of the Agency and the power to deposit the same in the name of the Agency in such bank or banks as the Agency may designate, and shall have the power to sign all checks of the Agency for the payment of money and the power to pay out and disburse such moneys under the direction of the Agency. In addition, all officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency, by its bylaws, or by its rules and regulations.

Section 9. **Appointment of Officers.** All officers of the Agency shall be appointed at the Annual Meeting of the Agency or at such other time as is necessary due to a vacancy. All officers shall hold offices for one year or until their successors are appointed. If the term of an Agency member should terminate, his term of office as an officer shall also terminate. The Chief Executive Officer and the Chief Financial Officer shall not be members of the Agency.



Section 10. **Members of Agency.** There shall be seven members of the Agency who 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. The term of the office of each member of the Agency shall be by appointment of the Onondaga County Legislature and each member shall continue to hold office until their successor is appointed and has qualified.

Section 11. **Vacancies.** Should any office except that of Chairman become vacant, the Agency shall appoint a successor at the next regular meeting, and such appointment shall be for the unexpired term of said office.

Section 12. **Additional Personnel.** The Agency may from time to time employ such personnel, as it deems necessary to exercise its powers, duties and functions as prescribed by the New York State Industrial Development Agency Act, as amended, and all other laws of the State of New York applicable thereto. The selection and compensation of all personnel shall be determined by the Agency subject to the laws of the State of New York.

### ARTICLE III MEETINGS

Section 1. **Annual Meeting.** The Annual Meeting of the Agency shall be held within the first quarter of the year or such time that the Board may determine at the regular meeting place of the Agency or such other time and place as the Agency shall determine.

Section 2. **Meetings.** Meetings of the Agency may be held at such times and places as from time to time may be determined by the Agency. The Chairman of the Agency may, when he deems it desirable, and shall, upon the written request of two members of the Agency, call a special meeting of the Agency. Notice of all meetings shall be **sent by United States mail, electronic mail**, or delivered to the residence or business address of each member, and to Agency Counsel, at least four days prior to the day the meeting is to occur. Whenever possible the notice shall set forth the matters to be considered at the meeting. Waivers of notice may be signed by any member or members who were not properly noticed.

Section 3. **Executive Sessions.** Upon motion identifying the general area(s) of the subject(s) to be considered and a majority vote of the membership, an executive session may be entered into and conducted by the Agency for the reasons enumerated in Public Officers Law § 105. During an executive session the Agency may take action on the matters which are the subject of the executive session, however, no action by formal vote may be taken in an executive session to appropriate public moneys. Minutes must be taken of any action that is taken by formal vote, and must consist of a record or summary of a final determination and the vote thereon. The minutes do not need to include any matters not required to be made available to the public pursuant to FOIL.

Section 4. **Quorum**. At all meetings of the Agency, a majority of the Agency shall constitute a quorum for the purpose of transacting business; provided that a small number may meet and adjourn to some other time or until a quorum is obtained.

#### **ARTICLE IV AMENDMENTS**

Section 1. **Amendments to Bylaws**. The bylaws of the Agency may be amended with the approval of a supermajority, five out of seven members of the Agency at a meeting, but no such amendment shall be adopted unless written notice thereof has been previously given to all members of the Agency.

#### **ARTICLE V PROJECTS**

Section 1. **Site of Agency Projects**. The Agency shall take local and state land use and environmental laws and regulations into consideration when reviewing and approving a project.

Section 2. **Compliance with Laws**. The Agency shall not approve the delivery of bonds for a project, which, at the time of such delivery is known by the Agency after reasonable inquiry to be in material violation of applicable zoning, environmental, labor or health laws or regulations, including applicable building and fire codes.

#### **ARTICLE VI COMMITTEES**

Section 1. **Governance Committee**. The Agency shall have a governance committee to be comprised of the Agency Chairman and two other members of the Agency appointed by the Chairman. Members of the Governance Committee shall be independent members as defined by the Public Authorities Accountability Act of 2005, as amended from time to time. The Governance Committee shall have such other purposes, powers, responsibilities and governance as provided in any charter adopted by the members of the Agency.

Section 2. **Audit Committee**. The Agency shall have an audit committee to be comprised of the Agency Chairman and two other members of the Agency appointed by the Chairman. Members of the Audit Committee shall be independent members as defined by the Public Authorities Accountability Act of 2005, as amended from time to time. It shall be the responsibility of the Audit Committee to recommend to the Agency the hiring of a certified independent accounting firm for the Agency, establish the compensation to be paid to the accounting firm and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purpose. The Audit Committee shall have such other purposes, powers, responsibilities and governance as provided in any charter adopted by the members of the Agency.

Section 3. **Finance Committee.** The Agency shall have a finance committee to be comprised by the three members of the Agency appointed by the Chairman. Members of the Finance Committee shall be independent members as defined by the Public Authorities Accountability Act of 2009, as amended from time to time. It shall be the responsibility of the Finance Committee to review proposals for the issuance of debt for the Agency and make recommendations to the Agency regarding the issuance of such debt; seek any information it requires from the Agency and project applicants regarding the proposals for the issuance of debt and retain and consult with, at the Agency's expense, such outside counsel, experts and other advisors as the Finance Committee may deem appropriate. The Finance Committee shall have such other purposes, powers, responsibilities and governance as provided by any charter adopted by the members of the Agency.

Section 4 **Other Committees.** The Agency may designate from among its members other committees, each consisting of one or more members, and each of which, to the extent provided in the resolution or committee charter, shall have all the authority of the Agency members, except as otherwise provided by law.



## **AUDIT COMMITTEE CHARTER**

This Audit Committee Charter was adopted by the Members of the Onondaga County Industrial Development Agency, a public benefit corporation established under the laws of the State of New York, on the 10<sup>th</sup> day of January 2008.

### **Purpose**

Pursuant to Article VI, Section 2 of the Agency's bylaws, the purpose of the audit committee shall be to (1) assure that the Agency's Members fulfill their responsibilities for the Agency's internal and external audit process, the financial reporting process and the system of risk assessment and internal controls over financial reporting; and (2) provide an avenue of communication between management, the independent auditors, and the Members.

### **Powers of the Audit Committee**

It shall be the responsibility of the Audit Committee to:

- Appoint, compensate, and oversee the work of any public accounting firm employed by the Agency.
- Conduct or authorize investigations into any matters within its scope of responsibility.
- Seek any information it requires from Agency employees, all of whom should be directed by the Members to cooperate with committee requests.
- Meet with Agency staff, independent auditors or outside counsel, as necessary.
- Retain, at the Agency's expense, such outside counsel, experts and other advisors, as the Audit Committee may deem appropriate.

### **Composition of Committee and Selection of Members**

The Audit Committee is established as set forth in and pursuant to Article VI, Section 2 of the Agency's bylaws. The Audit Committee shall be comprised of independent members. The Agency's Chairman will appoint the Audit Committee members and the Audit Committee Chair.

Audit Committee members shall be prohibited from being an employee of the Agency or an immediate family member of an employee of the Agency. In addition, Audit Committee members shall not engage in any private business transactions with the Agency or receive compensation from any private entity that has material business relationships with the Agency, or be an immediate family member of an individual that engages in private business transactions with the Agency or receives compensation from an entity that has material business relationships with the Agency.

The Audit Committee shall have access to the services of at least one financial expert.

The Audit Committee's financial expert should have 1) an understanding of generally accepted accounting principles and financial statements; 2) experience in preparing or auditing financial statements of comparable entities; 3) experience in applying such principles in connection with the accounting for estimates, accruals and reserves; 4) experience with internal accounting controls and, 5) an understanding of Audit Committee functions.

### **Meetings**

The Audit Committee will meet a minimum of twice a year, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in the charter.

Members of the Audit Committee are expected to attend each committee meeting, in person or via telephone or videoconference. The Audit Committee may invite other individuals, such as members of management, auditors or other technical experts to attend meetings and provide pertinent information, as necessary.

The Audit Committee will meet with the Agency's independent auditor at least annually to discuss the financial statements of the Agency.

Meeting agendas will be prepared for every meeting and provided to the Audit Committee members along with briefing materials before the scheduled Audit Committee meeting. The Audit Committee will act only on the affirmative vote of a majority of the members at a meeting or by the consent of a majority of the members. Minutes of these meetings will be recorded.

### **Responsibilities**

The Audit Committee shall have responsibilities related to: (a) the independent auditor and annual financial statements; (b) oversight of management's internal controls, compliance and risk assessment practices; (c) special investigations and whistleblower policies; and (d) miscellaneous issues related to the financial practices of the Agency.

#### **A. Independent Auditors and Financial Statements**

The Audit Committee shall:

- Appoint, compensate and oversee independent auditors retained by the Agency and pre-approve all audit services provided by the independent auditor.
- Establish procedures for the engagement of the independent auditor to provide permitted audit services. The Agency's independent auditor shall be prohibited from providing non-audit services unless having received previous written approval from the Audit Committee. Non-audit services include tasks that directly support the Agency's operations, such as bookkeeping or other services related to the accounting records or financial statements of the Agency, financial information systems design and implementation, appraisal or valuation services, actuarial services, investment banking services, and other tasks that may involve performing management functions or making management decisions.

- Review and approve the Agency's audited financial statements, associated management letter, report on internal controls and all other auditor communications.
- Review significant accounting and reporting issues, including complex or unusual transactions and management decisions, and recent professional and regulatory pronouncements, and understand their impact on the financial statements.
- Meet with the independent audit firm on a regular basis to discuss any significant issues that may have surfaced during the course of the audit.
- Review and discuss any significant risks reported in the independent audit findings and recommendations and assess the responsiveness and timeliness of management's follow-up activities pertaining to the same.

#### **B. Internal Controls, Compliance and Risk Assessment**

The Audit Committee shall:

- Review management's assessment of the effectiveness of the Agency's internal controls and review the report on internal controls by the independent auditor as a part of the financial audit engagement.

#### **C. Special Investigations**

The Audit Committee shall:

- Ensure that the Agency has an appropriate confidential mechanism for individuals to report suspected fraudulent activities, allegations of corruption, fraud, criminal activity, conflicts of interest or abuse by the members, officers, or employees of the Agency or any persons having business dealings with the Agency or breaches of internal control.
- Develop procedures for the receipt, retention, investigation and/or referral of complaints concerning accounting, internal controls and auditing to the appropriate body.
- Request and oversee special investigations as needed and/or refer specific issues to the appropriate body for further investigation (for example, issues may be referred to the State Inspector General or, other investigatory organization.)
- Review all reports delivered to it by the Inspector General and serve as a point of contact with the Inspector General.

#### **E. Other Responsibilities of the Audit Committee**

The Audit Committee shall:

- Present annually to the Agency's members a written report of how it has discharged its duties and met its responsibilities as outlined in the charter.
- Obtain any information and training needed to enhance the Committee members' understanding of the role of the independent auditor, the risk management process, internal controls and a certain level of familiarity in financial reporting standards and processes.

- Review the Committee's charter annually, reassess its adequacy, and recommend any proposed changes to the Members of the Agency. The Audit Committee charter will be updated as applicable laws, regulations, accounting and auditing standards change.
- Conduct an annual self-evaluation of its performance, including its effectiveness and compliance with the charter and request member approval for proposed changes.

## **GOVERNANCE COMMITTEE CHARTER**

This Governance Committee Charter was adopted by the Members of the Onondaga County Industrial Development Agency, a public benefit corporation established under the laws of the State of New York, on the 10<sup>th</sup> day of January 2008.

### **Purpose**

Pursuant to Article VI, Section 1 of the Agency's bylaws, the purpose of the Governance Committee is to assist the Members by:

- Keeping the Members informed of current best practices in corporate governance;
- Reviewing corporate governance trends for their applicability to the Onondaga County Industrial Development Agency;
- Updating the Onondaga County Industrial Development Agency's corporate governance principles and governance practices; and
- Advising those responsible for appointing Members to the Agency on the skills, qualities and professional or educational experiences necessary to be effective Agency Members.

### **Powers of the Governance Committee**

The Members have delegated to the Governance Committee the power and authority necessary to discharge its duties, including the right to:

- Meet with and obtain any information it may require from Agency staff.
- Obtain advice and assistance from outside counsel, accounting and other advisors as the Committee deems necessary.
- Solicit, at the Agency's expense, persons having special competencies, including legal, accounting or other consultants as the Committee deems necessary to fulfill its responsibilities. The Governance Committee shall have the authority to negotiate the terms and conditions of any contractual relationship subject to the Agency's adopted procurement guidelines as per Public Authorities Law Section 2879, and to present such contracts to the Members for their approval.

### **Composition and Selection**

The membership of the Committee shall be as set forth in accordance with and pursuant to Article IV, Section 1 of the Agency's bylaws. The Governance Committee shall be comprised of independent members. The Governance Committee members shall be appointed by, and will serve at the discretion of the Chairman of the Agency. The Chairman may designate one member of the Governance Committee as its Chair. The members shall serve until their resignation, retirement, removal by the Chairman or until their successors shall be appointed and qualified.



Governance Committee members shall be prohibited from being an employee of the Agency or an immediate family member of an employee of the Agency. In addition, Governance Committee members shall not engage in any private business transactions with the Agency or receive compensation from any private entity that has material business relationships with the Agency, or be an immediate family member of an individual that engages in private business transactions with the Agency or receives compensation from an entity that has material business relationships with the Agency.

The Governance Committee members should be knowledgeable or become knowledgeable in matters pertaining to governance.

### **Committee Structure and Meetings**

The Governance Committee will meet a minimum of twice a year, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in the charter. All Committee members are expected to attend each meeting, in person or via telephone or videoconference.

Meeting agendas will be prepared for every meeting and provided to the Governance Committee members in advance of the scheduled meeting, along with the appropriate materials needed to make informed decisions. The Governance Committee shall act only on the affirmative vote of a majority of the members at a meeting or by consent of a majority of the members. Minutes of these meetings are to be recorded.

### **Reports**

The Governance Committee shall:

- Report its actions and recommendations to the Members at the next regular meeting of the Members.
- Report to the Members, at least annually, regarding any proposed changes to the governance charter or the governance guidelines.
- Provide a self-evaluation of the Governance Committee's functions on an annual basis.

### **Responsibilities**

To accomplish the objectives of good governance and accountability, the governance committee has responsibilities related to: (a) the Agency's Members; (b) evaluation of the Agency's policies; and (c) other miscellaneous issues.

### **Relationship to the Authority's Members**

The Members have delegated to the Governance Committee the responsibility to review, develop, draft, revise or oversee policies and practices for which the Governance Committee has specific expertise, as follows:

- Develop the Agency's governance practices. These practices should address transparency, independence, accountability, fiduciary responsibilities, and management oversight.

- Develop the competencies and personal attributes required of Members to assist those authorized to appoint members to the Agency in identifying qualified individuals.

In addition, the governance committee shall:

- Develop and recommend to the Members the number and structure of committees to be created by the Members.
- Develop and provide recommendations to the Members regarding Agency Member education, including new Member orientation and regularly scheduled Agency Member training to be obtained from state-approved trainers.
- Develop and provide recommendations to the Members on performance evaluations, including coordination and oversight of such evaluations of the Members, its committees and senior management in the Agency's governance process.

### **Evaluation of the Agency's Policies**

The Governance Committee shall:

- Develop, review on a regular basis, and update as necessary the Agency's code of ethics and written policies regarding conflicts of interest. Such code of ethics and policies shall be at least as stringent as the laws, rules, regulations and policies applicable to state officers and employees.
- Develop and recommend to the Members any required revisions to the Agency's written policies regarding the protection of whistleblowers from retaliation.
- Develop and recommend to the Members any required revisions to the Agency's equal opportunity and affirmative action policies.
- Develop and recommend to the Members any required updates on the Agency's written policies regarding procurement of goods and services, including policies relating to the disclosure of persons who attempt to influence the Agency's procurement process.
- Develop and recommend to the Members any required updates on the Agency's written policies regarding the disposition of real and personal property.
- Develop and recommend to the Members any other policies or documents relating to the governance of the Agency, including rules and procedures for conducting the business of the Agency's Members, such as the Agency's by-laws. The Governance Committee will oversee the implementation and effectiveness of the by-laws and other governance documents and recommend modifications as needed.

### **Other Responsibilities**

The Governance Committee shall:

- Annually review, assess and make necessary changes to the Governance Committee charter and provide a self-evaluation of the Governance Committee.



## **FINANCE COMMITTEE CHARTER**

This Finance Committee Charter was adopted by the Members of the Onondaga County Industrial Development Agency, a public benefit corporation established under the laws of the State of New York, on this 11th day of February 2010.

### **Purpose**

Pursuant to Article VI, Section 3 of the Agency's bylaws, the purpose of the finance committee shall be to (1) review proposals for the issuance of debt by the Agency; and (2) provide recommendations to the Agency regarding the issuance of debt.

### **Powers of the Finance Committee**

It shall be the responsibility of the Finance Committee to:

- Review proposals for the issuance of debt for the Agency and make recommendations to the Agency regarding the issuance of such debt.
- Seek any information it requires from the Agency and project applicants regarding the proposals for the issuance of debt
- Retain and consult with, at the Agency's expense, such outside counsel, experts and other advisors as the Finance Committee may deem appropriate.

### **Composition of Committee and Selection of Members**

The Finance Committee is established as set forth in and pursuant to Article VI, Section 3 of the Agency's bylaws. The Finance Committee shall be comprised of a minimum of three independent members. The Agency's Chair will appoint the Finance Committee members and the Finance Committee Chair.

Finance Committee members shall be prohibited from being an employee of the Agency or an immediate family member of an employee of the Agency. In addition, Finance Committee members shall not engage in any private business transactions with the Agency or receive compensation from any private entity that has material business relationships with the Agency, or be an immediate family member of an individual that engages in private business transactions with the Agency or receives compensation from an entity that has material business relationships with the Agency.

The members of the Finance Committee shall possess the necessary skills to understand the duties and functions of the Finance Committee, including an understanding of the types of debt issued by the Agency.

## **Meetings**

The Finance Committee will meet a minimum of twice a year, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in the charter.

Members of the Finance Committee are expected to attend each committee meeting, in person or via videoconference. The Finance Committee may invite other individuals, such as members of management, financiers or other technical experts to attend meetings and provide pertinent information, as necessary.

Meeting agendas will be prepared for every meeting and provided to the Finance Committee members along with briefing materials before the scheduled Finance Committee meeting. The Finance Committee will act only on the affirmative vote of a majority of the members at a meeting or by the consent of a majority of the members. Minutes of these meetings will be recorded.

## **Responsibilities**

The Finance Committee shall have responsibilities related to the issuance of debt by the Agency.

The Finance Committee shall:

- Present annually to the Agency's members a written report of how it has discharged its duties and met its responsibilities as outlined in the charter.
- Obtain any information and training needed to enhance the Committee members' understanding of the issuance of debt by the Agency
- Review the Committee's charter annually, reassess its adequacy, and recommend any proposed changes to the Members of the Agency. The Finance Committee charter will be updated as applicable laws, regulations and standards change.
- Conduct an annual self-evaluation of its performance, including its effectiveness and compliance with the charter and request member approval for proposed changes.



## CODE OF ETHICS

### ARTICLE I. PURPOSE AND CONSTRUCTION

The Citizens of Onondaga County are entitled to expect the highest degree of conduct on the part of the Onondaga County Industrial Development Agency (the "Agency") officers, employees and members. The members of the Agency recognize that there must be rules of ethical conduct for its officers, employees and appointed officials to observe if a high degree of moral conduct is to be obtained and if public confidence is to be maintained in the Agency. It is the purpose of this Code of Ethics to promulgate these rules of ethical conduct for the officers, employees and members of the Agency. These rules shall serve as a guide for official conduct of such officers, employees and members.

### ARTICLE II. DEFINITIONS

#### Section 2.1.

Unless otherwise specifically indicated, for purposes of this Code of Ethics, the following terms shall have the following meanings:

- (a) "Agency" means the Onondaga County Industrial Development Agency.
- (b) "Appropriate body" pursuant to Article 18 of General Municipal Law means the Board of Ethics of the County of Onondaga.
- (c) "Child" means any son, daughter, step-son or step-daughter of an Agency officer, employee or member if such child is under 18 or is a dependant of the officer, employee or member as defined in the Internal Revenue Code Section 152(a)(1) and (2) and any amendments thereto.
- (d) "County" means the County of Onondaga.
- (e) "Interest" means a direct or indirect pecuniary or material benefit accruing to an Agency officer, employee or member, his or her spouse, or child whether as the result of a contract with the Agency or otherwise. For the purpose of this Code of Ethics, an Agency officer, employee or member shall be deemed to have an interest in the contract of (i) his/her spouse and children, except a contract of employment with the Agency

(ii) a firm, partnership or association of which such officer, employee or member or his/her spouse or child is a member or employee; (iii) a corporation of which such officer, employee or member, or his/her spouse or child is an officer or director; and (iv) a corporation of which more than 5% of the outstanding capital stock is owned by an officer, employee or member, or his/her spouse or child.

(f) "Relative" means a spouse or child of an Agency officer, employee or member.

(g) "Spouse" means the husband or wife of an officer, employee or member subject to the provisions of this Code of Ethics unless legally separated from such officer, employee or member.

### **ARTICLE III. CODE OF ETHICS**

There is hereby established and adopted a code of ethics containing the following standards of conduct for officers, employees and members of the Agency.

#### **Section 3.1.**

a. Conflict of Interest. No officer, employee or member of the Agency should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

b. Impressions. No officer, employee or member of the Agency should by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person. An officer or employee or member of the Agency should endeavor to pursue a course of conduct, which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

c. Receipt or Benefit. No officer, employee, or member of the Agency shall use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others, including directly or indirectly soliciting, accepting or agreeing to accept any benefit from another person upon an agreement that his/her vote, opinion, judgment, action, decision or exercise of discretion as an Agency officer, employee or member will thereby be influenced. A donation to a person seeking public or party office or to a committee supporting the efforts of such person shall not be considered such a benefit hereunder.

d. Confidential Information. No officer or employee or member of the Agency shall disclose information which is lawfully confidential and acquired by him in the course of his official duties or use such information to further his personal interests.

e. Representation before the Agency. An officer, employee or member of the Agency shall not receive or enter into any agreement, express or implied, for compensation or benefit to himself or a relative, directly or indirectly, for services to be rendered in relation to any matter before the Agency.

f. Disclosure of interest in any Agency Contract. To the extent that he knows thereof, any officer, employee or member of the Agency who has any interest in any contract or agreement of the Agency shall make prior disclosure in writing to the Chairman of the Agency and to the Agency's Counsel and shall withdraw from participation in any Agency process with respect thereto, subject to Section 801 of the General Municipal Law relating to prohibited conflicts of interest.

g. Partnership, unincorporated association or corporation. No partnership or unincorporated association of which an Agency officer, employee or member is a member or employee or in which he or she has a proprietary interest, nor any corporation of which an Agency officer, employee or member is an officer or director or legally or beneficially owns or controls more than five percent (5%) of the outstanding stock, shall appear before the Agency without full disclosure to the members, subject to Section 801 of the General Municipal Law relating to prohibited conflicts of interest.

h. Investments in conflict with official duties. (i) An officer, employee or member shall not invest or hold any investment directly or indirectly in any financial, business, commercial or other private endeavor or entity, which creates a conflict with his or her Agency duties; (ii) No officer or employee or member of the Agency shall engage in any transaction as representative or agent of the Agency with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

i. Private employment or services. An officer, employee or member shall not engage in, solicit, negotiate for or promise to accept employment or render services for private interests when such employment or service creates a conflict of interest with or impairs the proper discharge of official Agency duties. In the event such a conflict arises with respect to a member, (s)he shall notify the Chairman of the Agency of same and withdraw from participation in any Agency process with respect thereto.

j. Future employment. For a period of one (1) year after the termination of service or employment with the Agency, no former officer, employee or member, on his or her own behalf, or as an employee, agent or representative of another may apply to or appear before or conduct business with respect to the Agency in any matter concerning

which he or she personally rendered substantial services and made policy decisions during the period of his or her term of office, service or employment by the Agency. Said one (1) year prohibition may be waived by the members for good cause upon written application for such officer, employee or member. At the expiration of the one (1) year period and thereafter, the former officer, employee or member shall make prior disclosure in writing to the members of the nature and extent of his/her Agency involvement with matters (s)he now seeks to address with the Agency.

k. Offer of Employment. An officer, employee or member shall disclose in writing to the members any offer of employment received from any person, firm or corporation which, to the knowledge of such officer, employee or member, is furnishing or seeking to furnish goods or services to the Agency, if such officer, employee or member has substantial involvement or responsibility for policy making in securing such goods or services and if such officer, employee or member enters into negotiations for such employment. Such disclosure must be made whether or not such offer and negotiations are verbal or written and whether or not the offer is accepted.

l. Sale of Goods or Services. No officer or employee or member of the Agency employed on a full-time basis nor any firm or association of which such Agency member, officer or employee is a member nor corporation, a substantial portion of the stock of which is owned or controlled directly or indirectly by such member, officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the Agency.

Amended: April 9, 2009





## COUNTY OF ONONDAGA CODE OF ETHICS

LOCAL LAW NO. 13 – 1990

A LOCAL LAW OF THE COUNTY OF ONONDAGA ESTABLISHING A CODE OF ETHICS, CREATING A BOARD OF ETHICS, REQUIRING FINANCIAL DISCLOSURE BY CERTAIN OFFICERS, EMPLOYEES AND APPOINTED OFFICIALS AND REPEALING LOCAL LAW NO. 6 OF 1970

BE IT ENACTED BY THE ONONDAGA COUNTY LEGISLATURE OF THE COUNTY OF ONONDAGA, NEW YORK, AS FOLLOWS:

### ARTICLE I. PURPOSE AND CONSTRUCTION

The citizens of Onondaga County are entitled to expect the highest degree of conduct on the part of County officers, employees and appointed officials. The legislators of the County of Onondaga recognize that there must be rules of ethical conduct for its officers, employees and appointed officials to observe if a high degree of moral conduct is to be obtained and if public confidence is to be maintained in our County government. It is the purpose of this Law to promulgate these rules of ethical conduct for the officers, employees and appointed officials of the County of Onondaga. These rules shall serve as a guide for official conduct of such officers, employees and appointed officials. The rule of ethical conduct of this chapter is meant further to comply with Article Eighteen of the General Municipal Law.

### ARTICLE II. DEFINITIONS

Section 2.1. Unless otherwise specifically indicated, for purposes of this Local Law, the following terms shall have the following meanings:

(a) “Agency” means any of the divisions County government, referred to in subdivision (d) of this section except the legislature.

(b) “Appropriate body” pursuant to Article 18 of General Municipal Law means the Board of Ethics of the County of Onondaga.

(c) “Child” means any son, daughter, step-son or step-daughter of a County officer, employee or appointed official if such child is under 18 or is a dependant of the officer, employee or appointed official as defined in the Internal Revenue Code Section 152(a) (1) and (2) and any amendments thereto.

(d) "County" means the County of Onondaga or any department, board, executive division, institution, office, branch, bureau, commission, agency, legislature or other division or part thereof.

(e) "Interest" means a direct or indirect pecuniary or material benefit accruing to a County officer, employee or appointed official, his or her spouse, or child whether as the result of a contract with the County or otherwise. For the purpose of this chapter a County officer, employee or appointed official shall be deemed to have an interest in the contract on (i) his/her spouse and children, except a contract of employment with the County (ii) a firm, partnership or association of which such officer, employee or appointed official or his/her spouse or child is a member of employee; (iii) a corporation of which such officer, employee or appointed official, or his/her spouse or child is an officer or director; and (iv) a corporation of which more than 5% of the outstanding capital stock is owned by an officer, employee or appointed official, or his/her spouse or child.

(f) "Legislation" means a matter which appears upon the calendar or agenda of the County Legislature of Onondaga County or upon a committee thereof upon which any official action has been taken and shall include adopted acts, local laws, ordinances or resolutions.

(g) "Officer" or "employee" means any officer or employee of the County of Onondaga and any elected officials, appointed officials and heads of any agency, institution, department, office, branch, division, council, commission, board or bureau of the County of Onondaga whether paid or unpaid.

(h) "County elected official" means the County Executive, a County Legislator, the County Clerk, the District Attorney, the Comptroller or Sheriff.

(i) "Appointed official" means any individual who is appointed by the County Executive or the County Legislature to any agency, institution, department, office, branch, division, council, commission, board or bureau, whether unpaid or paid.

(j) "Relative" means a spouse or child of a County officer, employee or appointed official.

(k) "Reporting officer, employee or appointed official" means a Level I or Level II officer, employee or appointed official who is required to complete and file an annual statement of financial disclosure pursuant to this Local Law:

1. "Level I reporting officer, employee or appointed official" includes elected officials, and heads of any agency, institution, department, office, branch, division, council, commission, board or bureau of the County of Onondaga whether paid or unpaid. It also means those appointed officials, deputies, assistants, officers and employees who hold policymaking positions, as determined annually by the County Executive.

The County Executive's determination of policymaking positions shall be filed with the Board of Ethics before March 1 each year. No person shall be deemed to be a Level I reporting officer, employee or appointed official solely by reason of being a volunteer fireman or civil defense volunteer except a fire chief or coordinator or assistant. Any unpaid reporting officer, employee or appointed official, except the members of the Board of Ethics, may make application to the Board of Ethics for exemption from the financial reporting requirements of Article IX and Article X herein and shall be granted such exemption by the Board of Ethics upon a showing of good cause.

2. "Level II reporting officer, employee or official" includes unpaid or paid members of any commission, board or bureau who are not determined by the County Executive to be policy makers;

(l) "Spouse" means the husband or wife of an officer, employee or appointed official subject to the provisions of this Local Law unless legally separated from such officer, employee or appointed official.

(m) "Jurisdiction" shall mean having authority, capacity, power or right to act with regard to the management and administration of policy and supervision of personnel of the county agency (as defined above at 2.1(a)) in which (s) he is an officer, employee or appointed official (as defined above at 2.1 (h)).)

### ARTICLE III. CODE OF ETHICS

There is hereby established and adopted a code of ethics containing the following standards of conduct for officers, employees, and appointed officials of Onondaga County.

Section 3.1. (a) Receipt of Benefit. They shall not directly or indirectly solicit, accept or agree to accept any benefit from another person upon an agreement that her/his vote, opinion, judgment, action, decision or exercise of discretion as a County officer, employee or appointed official will thereby be influenced. A donation to a person seeking public or party office or to a committee supporting the efforts of such person shall not be considered such a benefit hereunder.

(b) Confidential information. They shall not disclose information which is lawfully confidential and acquired by them in the course of their official duties or use such information to further their personal interests.

(c) Representation before one's own agency. They shall not receive or enter into any agreement, express or implied, for compensation or benefit to themselves or a relative, directly or indirectly, for services to be rendered in relation to any matter before any County agency or which they are an officer, employee or appointed official or of any

County agency over which they have jurisdiction or to which they have the power to appoint any officer, employee or appointed official.

(d) Representation before any agency for a contingent fee. They shall not receive nor enter into any agreement, express or implied, for compensation of benefit to themselves or a relative, directly or indirectly, for services to be rendered in relation to any matter before any agency of the County, whereby their compensation is to be dependent or contingent upon any action by such agency over which he/she has substantial involvement and policy-making authority with respect to such matter, provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

(e) Disclosure of interest in any legislation or County contract. To the extent that they know thereof, any officer, employee or appointed official of the County of Onondaga, whether paid or unpaid, who has any interest in any legislation before the County Legislature or a committee thereof and who gives any opinion to such body upon such legislation or who has an interest in any contract or agreement of the County or an agency in which he or she may make policy decisions or perform discretionary acts thereof, shall disclose to an immediate supervisor in writing the nature and extent of such interest. Such disclosure shall be made prior to rendering such opinion or engaging in said policy decisions and discretionary acts. A County Legislator who has any interest in any such legislation, contract or agreement shall make prior disclosure in writing to the Chairperson of the Legislature and to the County Attorney in lieu of a supervisor and shall withdraw from participation in any legislative process with respect thereto.

(f) Partnership, unincorporated association or corporation. No partnership or unincorporated association of which a County officer, employee or appointed official is a member or employee or in which he or she has a proprietary interest, nor any corporation of which a County officer, employee or appointed official is an officer or director or legally or beneficially owns or controls more than five percent of the outstanding stock, shall appear before the agency served by or which employs such County officer, employee or appointed official on behalf of any person other than the county without full disclosure to the Board of Ethics.

(g) Investments in conflict with official duties. An officer, employee or appointed official shall not invest or hold any investment directly or indirectly in any financial, business, commercial or other private endeavor or entity, which creates a conflict with his or her official County duties.

(h) Private employment or services. An officer, employee or appointed official shall not engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict of interest with or impairs the proper discharge of official County duties. In the event such a conflict arises with respect to a legislator, (s)he shall notify

the Chairperson of the Legislature of same and withdraw from participation in any legislative process with respect thereto.

(i) Future employment. For a period of one year after the termination of service or employment with the County, no former officer, employee or appointed official, on his or her own behalf, or as an employee, agent or representative of another may apply to or appear before or conduct business with respect to any County agency or legislative body in any matter concerning which he or she personally rendered substantial services and made policy decisions during the period of his or her term of office, service or employment by such agency or body. Said one year prohibition may be waived by the Board of Ethics for good cause upon written application of such officer, employee or appointed official. At the expiration of the one year period and thereafter, the former officer, employee or appointed official shall make prior disclosure in writing to the Board of Ethics of the nature and extent of his/her county involvement with matters (s)he now seeks to address with such county agency or legislature.

(j) Offer of Employment. An officer, employee or appointed official shall disclose in writing to the Board of Ethics any offer of employment received from any person, firm or corporation which, to the knowledge of such officer, employee or appointed official, is furnishing or seeking to furnish goods or services to the County, if such officer, employee or appointed official has substantial involvement or responsibility for policy making in securing such goods or services and if such officer, employee or appointed official enters into negotiations for such employment. Such disclosure must be made whether or not such offer and negotiations are verbal or written and whether or not the offer is accepted.

Section 3.2 All persons, firms, or corporations rendering services to the County as contractors, consultants, or in any other professional capacity, whether paid or unpaid, shall file an instrument with the Onondaga County Attorney. Such instrument shall be in the form of a written affidavit and shall state that "the party agrees that it has no interest and will not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of the services to be rendered to the County." Such instrument shall further state that "the party further agrees that, in the rendering of services to the County, no person having any such interest shall knowingly be employed by it." Filing of all or part of such instrument may be waived by the Board of Ethics for good cause upon written application.

#### ARTICLE IV. BOARD OF ETHICS

Section 4.1. There is hereby created and established a Board of Ethics consisting of at least three (3) members, all of whom shall reside in the County and who shall serve without compensation.

Section 4.2. All members of such Board shall be appointed by the County Executive subject to confirmation by the County Legislature. Members shall be appointed for a term of three (3) years with no member serving more than two full three (3) year terms.

Section 4.3. Each member shall serve until his or her successor has been appointed.

Section 4.4. At least one member of such Board shall be an elected officer or employee of the County of Onondaga, but a majority of such members may not be officers or employees of the County.

Section 4.5. The Board of Ethics shall render advisory opinions in writing to officers, employees or appointed officials of the County with respect to this Local Law and Article Eighteen of the General Municipal Law. Such opinions shall be rendered only upon written request by the officer, employee or appointed official concerned with the subject of the inquiry.

Section 4.6. Such opinions shall not be made public or disclosed unless required by the Freedom of Information Law (Public Officers Law Article 6) or required for use in a disciplinary proceeding or proceeding under Article XI of this Local Law involving the officer, employee or appointed official who requested the advisory opinion. Whenever a request for access to an advisory opinion herein is received, the officer, employee or appointed official shall be notified of the request within forty-eight (48) hours of the receipt of the request.

Section 4.7. The Board of Ethics shall possess all powers and duties authorized by Section 808 of General Municipal Law.

Section 4.8. The Board of Ethics shall be the repository for completed annual statements of financial disclosure, pursuant to §808(5) of General Municipal Law and Article VIII herein and such written instruments, affidavits, and disclosures as set forth in Article III above.

Section 4.9. The Board of Ethics shall possess, exercise and enjoy all the rights, powers and privileges necessary and proper to the enforcement of the Code of Ethics and completion and filing by reporting officers, employees or appointed officials or the County of annual statements of financial disclosure required by this act.

Section 4.10. The Board of Ethics shall promulgate rules and regulations in furtherance of its powers and duties enumerated herein. Said rules and regulations shall include rules governing the conduct of adjudicatory proceedings and appeals relating to the assessment of the civil penalties herein authorized. Such rules shall provide for due process procedural mechanisms substantially similar to those set forth in Article III or the State Administrative Procedure Act, but such mechanisms substantially similar to those set forth in Article II of the State Administrative Procedure Act, but such mechanisms need not be identical in terms or scope. Such procedural mechanisms shall include but not be limited to the power of the Board of Ethics to request from the County Legislature a subpoena for any individual, whether or not a County officer, employee or appointed official, and any document of thing which the Board of Ethics seems necessary to the resolution of any pending adjudicatory proceeding or matter

Section 4.11. The County Attorney or his designated deputy shall serve as counsel to the Board of Ethics.

Section 4.12. Members of the Board of Ethics shall be indemnified and defended by Onondaga County in like manner and according to the provisions of Resolution #168 or 1990, "Defense and Indemnification of Public Officers and Employees of Onondaga County," and any amendments thereto.

#### ARTICLE V. SUITS AGAINST THE COUNTY

Nothing herein shall be deemed to bar or prevent the timely filing by a present or former Onondaga County officer, employee or appointed official of any claim, account, demand or suit against the County or any agency thereof on his or her own behalf or the behalf of a relative arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

#### ARTICLE VI. DISTRIBUTION OF THIS LOCAL LAW

Within thirty days of the effective date of this Local Law, and any amendments thereof, the County Executive shall cause a copy of this Local Law and any amendments of same to be distributed to every officer, employee and appointed official of the County, and shall further cause a copy of this Local Law to be conspicuously posted in all public buildings owned or controlled by the County. Each officer, employee or appointed official elected or appointed thereafter shall be furnished a copy before entering upon the duties of County employment.

#### ARTICLE VII. DISCLOSURE FORM; DISTRIBUTION

The County Executive shall, on or before the fifteenth day of March of each year, cause to be distributed, for completion and filing, to those officers, employees and appointed officials set forth in Article II Section 2.1 (k) of this Law, forms substantially similar to those set forth in Article VIII of this Law.

ARTICLE VIII. FORMS

The annual statement of financial disclosure shall be in substantially the following form: ANNUAL STATEMENT OF FINANCIAL DISCLOSURE FOR ONONDAGA COUNTY.

For calendar year \_\_\_\_\_.

(A) Level I Officers, Employees and Appointed Officials:

1. Name \_\_\_\_\_

2.

(a) Title of Position \_\_\_\_\_

(b) Department, Agency or other Government Entity \_\_\_\_\_

\_\_\_\_\_

(c) Address of Present Office \_\_\_\_\_

\_\_\_\_\_

(d) Office Telephone Number \_\_\_\_\_

3. (a) Marital Status \_\_\_\_\_. If married, please give spouse's full name including maiden name where applicable.

\_\_\_\_\_

(b) List the names of all children.

\_\_\_\_\_

\_\_\_\_\_

4. Answer each of the following questions completely.

(a) List the location of any real property within the County or within five miles of the County in which he or she, or his or her spouse or children, has an ownership or other financial interest;



(b) List the name of any partnership, unincorporated association, or other unincorporated business, of which he or she, or his or her spouse, is a member, officer, of employee, or in which he or she, or his or her spouse, has a proprietary interest, and his or her position, and his or her spouse's position, if any, with the partnership, association, or business;

(c) List the name of any corporation of which he or she, or his or her spouse, is an officer, director or employee, or of which he or she, or his or her spouse, legally or beneficially owns or controls more than five percent of the outstanding stock, and his or her position, and his or her spouse's position, if any, with the corporation; and

(d) List the name and description of any self-employment from which he or she, or his or her spouse, has derived, during the previous calendar year, gross income in excess of two thousand dollars.

(e) List each source of gifts, excluding campaign contributions, in excess of \$1,000, received during the reporting period for which this statement is filed by the reporting individual or such individual's spouse or child from the same donor, excluding gifts from a relative. Include the name and address of the donor. The term "gifts" does not include reimbursements, which term is defined in item (f) herein. Indicate the value and nature of each such gift.

(f) Identify and briefly describe the source of any reimbursements for expenditures, excluding campaign expenditures and expenditures in connection with official duties reimbursed by the political subdivision for which this statement has been filed, in excess of \$1,000 from each such source. For purposes of this item, the term "reimbursements" shall mean any travel-related expenses provided by non-governmental sources and for activities related to the reporting individual's official duties such as, speaking engagements, conferences, or fact-finding events. The term "reimbursements" does not include gifts reported under item (e) herein.

5. If a reporting officer, employee or appointed official is not able, after reasonable efforts, to obtain some of all of the information required by paragraph four of this section which relates to his or her spouse or household member, he or she shall so state, as part of the annual disclosure statement.

6. If a reporting officer, employee or appointed official practices law, is licensed by the department of state as a real estate broker or agent or practices a profession licensed by the department of education, his or her annual disclosure statement shall include a general description of the principal subject areas of matter undertaken by such officer, employee or appointed official in his or her licensed practice. If such officer, employee or appointed official practices with a partnership, unincorporated association or corporation and is a partner or shareholder of the firm or corporation his or her annual disclosure statement shall include a general description of the principal subject areas of matters undertaken by such firm or corporation. The disclosure required by this section shall not include the names of individual clients, customers, or patients.

(B) Level II Officers, Employees and Appointed Officials:

1. Name\_\_\_\_\_

(a) Title of Position\_\_\_\_\_

(b) Department, Agency or other Government Entity\_\_\_\_\_

\_\_\_\_\_

(c) Address of Present Office\_\_\_\_\_

\_\_\_\_\_

(d) Office Telephone Number\_\_\_\_\_

2. Please verify the following statement:

I have received and read a copy of the Local Law No. 13 of 1990 of the County of Onondaga establishing a Code of Ethics, creating a Board of Ethics, and requiring financial disclosure. As defined under that law, I know of no conflict which exists concerning my position with the County except for

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

As my circumstances change, I will duly notify the Board of ethics for the County of Onondaga forthwith.

\_\_\_\_\_  
Name

Sworn to before me

This \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

#### ARTICLE IX. FILING

Annual statement of financial disclosure; filing; exceptions and extensions.

1. Any person required to file an annual statement of financial disclosure pursuant to this chapter shall submit such completed form on or before the fifteenth day of May of each year to the Board of Ethics.

2. Any person required to file such statement who becomes so required after May fifteenth of any year shall file such statement within thirty days of becoming so required.

3. Any person who is subject to the reporting requirements of this chapter and who timely filed with the Internal Revenue Service an application for automatic extension of time in which to file his or her individual income tax return for the immediately preceding calendar or fiscal year shall be required to submit such financial disclosure statement on or before May fifteenth but may, without being subjected to any civil penalty on account of a deficient statement, indicate with respect to any item of the disclosure statement that information with respect thereto is lacking but will be supplied in a supplementary statement of financial disclosure, which shall be filed on or before the seventh day after the expiration of the period of such automatic extension of time within which to file such individual income tax return, provided that failure to file or to timely file such supplementary statement of financial disclosure or the filing of an incomplete or deficient supplementary statement of financial disclosure shall be subject

to the notice and penalty provisions of this law respecting annual statements of financial disclosure as if such supplementary statement were an annual statement.

4. Any person who is required to file an annual financial disclosure statement may be granted by the County Board of Ethics an additional period of time within which to file such statement based upon justifiable cause or undue hardship, in accordance with required rules and regulations on the subject adopted by the Board of Ethics pursuant to this law and shall file such statement within the additional period of time granted.

5. No annual statements of financial disclosure, or the information contained therein, shall be made public or disclosed unless such is required by the Freedom of Information Law (Public Officers Law Article 6) or made necessary or permitted by the provisions of this Local Law; and whenever a request for access to the annual financial statement of a person required to file such statement as provided herein is received, such covered person shall be notified of the request within forty-eight (48) hours of the receipt of the request.

#### ARTICLE X. PENALTIES

In addition to any penalty contained in any other provision of law, any reporting officer, employee or appointed official who is required to complete and submit an annual statement and who knowingly and willfully fails to do so or who knowingly and willfully with intent to deceive makes a false statement or gives information on such statement which such individual knows to be false may be assessed a civil penalty in an amount not to exceed one thousand dollars and/or may be subjected to disciplinary action as otherwise provided by law. Assessment of a civil penalty hereunder shall be made by the Board of Ethics, subject to approval by the Onondaga County Legislature. Assessment of a civil penalty shall be subject to review at the instance of the affected individual in a proceeding commenced pursuant to article seventy-eight of the Civil Practice Law and Rules.

#### ARTICLE XI. REPEAL OF LOCAL LAW 6-1970

Local Law 6 of 1970 is hereby repealed and the Board of Ethics established therein is dissolved.

#### ARTICLE XII. SEVERABILITY

If any section, subdivision, clause, item or other part of this local law, or the application thereof should be held by a court of competent jurisdiction to be invalid, void, or violative of a constitution or controlling law, such holding or determination shall be restricted to such section, subdivision, clause, item or other part of the application thereof and shall not apply to the remaining parts of such local law. Such remaining parts shall continue in full force and effect.

### ARTICLE XIII. ENABLING LEGISLATION

The provisions of this local law are enacted pursuant to the authority granted by Article Eighteen of the General Municipal Law.

### ARTICLE XIV. EFFECTIVE DATE

This Local Law shall take effect immediately subject to the provisions of the Municipal Home Rule Law, except that the Financial Disclosure provisions shall not take effect until December 30, 1990. The first annual statements of financial disclosure shall relate to calendar year 1990 and submission of such statements shall not be required until May 15, 1991.



**COUNTY OF ONONDAGA  
ANNUAL STATEMENT OF FINANCIAL DISCLOSURE  
FOR LEVEL ONE OFFICERS**

All the members of the Onondaga County Industrial Development Agency (the “Agency”) are considered Level One Officers and must complete the Annual Statement of Financial Disclosure for Level One Officers, Employees and Appointed Officials required by the County of Onondaga (the “County”). Each year the County will send each member of the Agency the Annual Statement of Financial Disclosure to complete and return by the specified date. The following form is an example of the Annual Statement of Financial Disclosure that is required.

[Remainder of page intentionally left blank]

ANNUAL STATEMENT OF FINANCIAL DISCLOSURE  
 FOR ONONDAGA COUNTY FOR CALENDAR YEAR 2008 FOR  
 LEVEL I OFFICERS, EMPLOYEES AND APPOINTED OFFICIALS

1. Your Name \_\_\_\_\_

2. (a) Title of Onondaga County Position \_\_\_\_\_

(b) County Department, County Agency or other County Government Affiliation:  
 \_\_\_\_\_

(c) Present Business or Home Address \_\_\_\_\_

(d) Present Business or Home Telephone Number \_\_\_\_\_

3. (a) Your Present Marital Status \_\_\_\_\_. If married, please give spouse's full name, including maiden name where applicable.  
 \_\_\_\_\_

(b) List the names and ages of any child. For purposes of completing this statement "child" is defined as a son, daughter, step-son or step-daughter under 18 years of age or a dependent as defined by the Internal Revenue Code.

<u>Name</u>	<u>Age</u>

4. (a) "Reporting Category." For the purpose of completing the statement of financial disclosure, no exact dollar amounts are to be included. Rather, whenever a value or amount is required to be reported herein, such value or amount shall be reported as being within one (1) of the following categories:

- Category A: \$0 - \$10,000
- Category B: \$10,001 - \$50,000
- Category C: Over \$50,000

(b) List the location of any real property within the County or within five miles of the County in which he or she, or his or her spouse or his or her dependent child, has an ownership or other financial interest:

<u>Family Member</u>	<u>Location</u>	<u>Reporting Category</u>

(c) List the name of any partnership, unincorporated association, or other unincorporated business, of which he or she, or his or her spouse, or his or her dependent child, is a member, officer or employee, or in which he or she, or his or her position, and his or her spouse's position, or his or her dependent child's position, if any, with the partnership, association, or business;

<u>Family Member</u>	<u>Name and Address of Organization</u>	<u>Position</u>	<u>Reporting Category</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(d) List the name of any corporation of which he or she, or his or her spouse, or his or her dependent child, is an officer, director, or employee, or of which he or she, or his or her spouse, or his or her dependent child, legally or beneficially owns or controls more than five percent of the outstanding stock, and his or her position, and his or her spouse's position, or his or her dependent child's position, if any, with the corporation; and

<u>Family Member</u>	<u>Name and Address of Organization</u>	<u>Position</u>	<u>Reporting Category</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(e) List the name and description of any outside employment from which he or she, or his or her spouse, or his or her dependent child, has derived, during the previous calendar year, gross income in excess of two thousand dollars.

<u>Family Member</u>	<u>Name and Address of Organization</u>	<u>Position</u>	<u>Reporting Category</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(f) List each source of gifts, excluding campaign contributions, in excess of \$1,000, received during the reporting period for which this statement is filed by the reporting individual or such individual's spouse or dependent child from the same donor, excluding gifts from a relative. Include the name and address of the donor. The term "gifts" does not include reimbursements, which term is defined in item (g) herein. Indicate the value and nature of each such gift.

<u>Family Member</u>	<u>Name and Address of Organization</u>	<u>Position</u>	<u>Reporting Category</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



(g) Identify and briefly describe the source of any reimbursements for expenditures, excluding campaign expenditures and expenditures in connection with official duties reimbursed by the political subdivision for which this statement has been filed, in excess of \$1,000 from each such source. For purposes of this item, the term "reimbursements" shall mean any travel-related expenses provided by non-governmental sources and for activities related to the reporting individual's official duties such as, speaking engagements, conferences, or fact-finding events. The term "reimbursements" does not include gifts reported under item (f) herein.

<u>Source</u>	<u>Description</u>	<u>Reporting Category</u>

5. If a reporting officer, employee or appointed official is not able, after reasonable efforts, to obtain some or all of the information required by paragraph four of this section which relates to his or her spouse or household member, he or she shall so state, as part of the annual disclosure statement.

---



---



---



---

6. If a reporting officer, employee or appointed official practices law, is licensed by the department of state as a real estate broker or agent or practices a profession licensed by the department of education, his or her annual disclosure statement shall include a general description of the principal subject areas of matter undertaken by such officer, employee or appointed official in his or her licensed practice. If such officer, employee or appointed official practices with a partnership, unincorporated association or corporation and is a partner or shareholder of the firm or corporation his or her annual disclosure statement shall include a general description of the principal subject areas of matters undertaken by such firm or corporation. The disclosure required by this section shall not include the names of individual clients, customers or patients.

---



---



---



---

I hereby certify under penalty of perjury, that the information disclosed on this form is true and complete.

\_\_\_\_\_  
Name

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public



**INDIVIDUAL MEMBER CERTIFICATE REGARDING  
NO CONFLICT OF INTEREST  
MEETING DATE:**

I, the undersigned Members and Officers of the Onondaga County Industrial Development Agency (the "Agency"), **DO HEREBY CERTIFY**, as follows:

2. The Agency has considered undertaking projects for the following companies (each a "Company"):

**Project Names**

3. I **do not** have an "interest" (as defined pursuant to Article 18 of the General Municipal Law of the State of New York) in the company or in any lease or installment sale agreement that may be entered into between the Agency and a Company identified in paragraph 1.

"Interest" as defined in Article 18 of the General Municipal Law means

(a) a direct or indirect pecuniary or material benefit accruing to a member of the Agency as the result of a contract with the Agency or

(b) a contract between the Agency and

(i) a member's spouse, minor children and dependents,

(ii) a firm, partnership or association of which such member is a member or employee,

(iii) a corporation of which such member is an officer, director or employee or

(iv) any entity, which is owned or controlled directly or indirectly by such member.

4. I **do not** directly or indirectly own stock of or have an ownership interest in a Company identified in paragraph 1.

5. I **am not** an officer or employee of a Company identified in paragraph 1.

6. I **am not** a member of the board of directors of a Company identified in paragraph 1.

7. The nature and extent of any interest I may have is described in Exhibit A annexed hereto.

SIGNED:	Chairman	_____
	Vice Chairman	_____
	Board Member	_____
	Board Member	_____
	Board Member	_____
	Board Member	_____
	Board Member	_____
	Executive Director	_____
	Board Secretary	_____
	Board Treasurer	_____
	Staff	_____
	Staff	_____
	Staff	_____



## CERTIFICATE OF INDEPENDENCE

Section 2825 of the Public Authority Accountability Act requires the majority of the members of the governing body of a state or local authority to be independent members, except those members who serve by virtue of holding an office of the state. Below please certify your independence.

I, \_\_\_\_\_, hereby certify that I am an independent member of the Onondaga County Industrial Development Agency (the "Agency").

By certifying that I am an independent member of the Agency, I am certifying that

1. I am not, and in the past two years have not been, employed by the Agency or an affiliate in an executive capacity;

2. I am not, and in the past two years have not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars for goods and services provided to the Agency or received any other form of financial assistance valued at more than fifteen thousand dollars from the Agency;

3. I am not a relative of an executive officer or employee in an executive position of the Agency or an affiliate; and

4. I am not, and in the past two years have not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the Agency or any Agency affiliate.

5. I am not and have not been in the past two years employed by the public authority or a related authority or public benefit corporation in an executive capacity.

6. I am not a relative of an executive officer or employee in an executive position of the public authority or a related authority or public benefit corporation.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_



## **COMPENSATION, REIMBURSEMENT AND ATTENDANCE POLICY**

The Onondaga County Industrial Development Agency (the "Agency") shall contract with the County of Onondaga for the Agency's staff, including its Executive Director upon terms and conditions mutually agreeable between the Agency and the County of Onondaga

The Executive Director shall attend all meetings of the members of the Agency.

The Agency's staff shall be reimbursed for expenses incurred for the benefit of the Agency as approved by the Agency.

Members of the Agency shall receive no compensation for their services to the Agency, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties.



## INDEMNIFICATION POLICY

### Section 1. Indemnification

(a) The Agency shall indemnify to the fullest extent now or hereafter permitted by law each person involved in, or made or threatened to be made a party to, any action, suit, claim or proceeding, arbitration, alternative dispute resolution mechanism, investigation, administrative or legislative hearing or any other actual, threatened, pending or completed proceeding, whether civil or criminal, or whether formal or informal, and including an action by or in the right of any corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, whether profit or non-profit (any such entity being hereinafter referred to as an "Enterprise"), and including appeals therein (any such process being hereinafter referred to as a "Proceeding"), by reason of the fact that such person, such person's testator or intestate (i) is or was a member or officer of the Agency, or (ii) while serving as a member or officer of the Agency, is or was serving, at the request of the Agency, as a director, officer, or in any other capacity, of any other Enterprise, against any and all judgments, fines, penalties, amounts paid in settlement, and expenses, including attorneys' fees, actually and reasonably incurred as a result of or in connection with any Proceeding, or any appeal therein, except as provided in subparagraph (b) below.

(b) No indemnification shall be made to or on behalf of any such person if a judgment or other final adjudication adverse to such person establishes that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that such person personally gained in fact a financial profit or other advantage to which such person was not legally entitled. In addition, no indemnification shall be made with respect to any Proceeding initiated by any such person against the Agency, or a member or officer of the Agency, other than to enforce the terms of this Indemnification Policy, unless such Proceeding was authorized by the Members of the Agency. Further, no indemnification shall be made with respect to any settlement or compromise of any Proceeding unless and until the Agency has consented to such settlement compromise.

(c) Written notice of any Proceeding for which indemnification may be sought by any person shall be given to the Agency as soon as practicable. The Agency shall then be permitted to participate in the defense of any such Proceeding or, unless conflicts of interest or position exist between such person and the Agency in the conduct of such defense, to assume such defense. In the event that the Agency assumes the defense of any such Proceeding, legal counsel selected by the Agency shall be acceptable to such person. After such an assumption, the Agency shall not be liable to such person

for any legal or other expenses subsequently incurred unless such expenses have been expressly authorized by the Agency. In the event that the Agency participates in the defense of any such Proceeding, such person may select counsel to represent such person in regard to such a Proceeding; however, such person shall cooperate in good faith with any request that common counsel be utilized by the parties to any Proceeding who are similarly situated, unless to do so would be inappropriate due to actual or potential differing interests between or among such parties.

(d) In making any determination regarding any person's entitlement to indemnification hereunder, it shall be presumed that such person is entitled to indemnification, and the Agency shall have the burden of proving the contrary.

### Section 2. Advancement of Expenses

Except in the case of a Proceeding against a member or officer specifically approved by the Members of the Agency, the Agency shall, subject to Section 1 above, pay all expenses incurred by or on behalf of a member or officer in defending any Proceeding in advance of the final disposition of such Proceeding. Such payments shall be made promptly upon receipt by the Agency, from time to time, of a written demand of such person for such advancement together with an undertaking by or on behalf of such person to repay any expenses so advanced to the extent that the person receiving the advancement is ultimately found not to be entitled to indemnification for part or all of such expenses.

### Section 3. Rights Not Exclusive

The rights to indemnification and advancement of expenses granted by or pursuant to this Indemnification Policy: (i) shall not limit or exclude, but shall be in addition to, any other rights which may be granted by or pursuant to any statute, charter, by-law, resolution of Members or by agreement; (ii) shall be deemed to constitute contractual obligations of the Agency to any member or officer who serves in a capacity referred to in Section 1 at any time while this Indemnification Policy is in effect; (iii) shall continue to exist after the repeal or modification of this Indemnification Policy with respect to events occurring prior thereto; and (iv) shall continue as to a person who has ceased to be a member or officer and shall inure to the benefit of the estate, spouse, heirs, executors, administrators or assigns of such person. It is the intent of this Indemnification Policy to require the Agency to indemnify the persons referred to herein for the aforementioned judgments, fines, penalties, amounts paid in settlement, and expenses, including attorney's fees, in each and every circumstance in which such indemnification could lawfully be permitted by express provisions of by-laws or by law, and the indemnification required by this Indemnification Policy shall not be limited by the absence of an express recital of such circumstances.



ONONDAGA COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

## INVESTMENT POLICY

### I. Purpose

The purpose of establishing an investment policy is to develop operating principles within the guidelines of current legislation governing investment activity. The Chief Financial Officer and Treasurer will be guided by this Investment Policy in managing the short and long-term investment of the Agency's available cash.

### II. Objectives

The Agency's primary investment objectives are:

1. **Legal.** To conform to all applicable federal, state and other legal requirements. This relates both to the types of eligible investments and the requirements for adequate collateral to provide insurance for all investments.
2. **Preservation.** To preserve principal. Safety considerations include: 1) FDIC coverage, 2) written third party collateral agreements with local Banking Depositories and 3) statutory guidelines which govern the types of investments allowed by public benefit corporations.
3. **Liquidity.** To provide sufficient cash to meet all operating and debt service requirements. A cash flow projection developed for both capital and operational commitments is a basic tool used in the planning and timing of maturing investments to meet anticipated demands.
4. **Yield.** To select investments, which will return to the Agency the highest possible interest rate. While rate of return is important, primary consideration is given to the legal, safety and liquidity requirements.

### III. Scope

The Investment Policy encompasses all moneys that become available for investment and/or deposit by the Agency on its own behalf or on behalf of any other entity.

### IV. Standards of Prudence and Ethics

1. **Prudence:** The Chief Financial Officer and Treasurer shall seek to act responsibly as a custodian of the public trust and shall avoid any transaction that might impair public confidence to govern effectively. The Chief Financial Officer and Treasurer shall act in accordance with written procedures as outlined in the Agency



Investment Policy and exercise due diligence as investment officials. Investments shall be made with judgment and care, under prevailing circumstances, considering the probable safety of Agency revenues as well as the probable income to be derived from investments.

2. **Ethics:** The Chief Financial Officer and Treasurer shall refrain from any personal business activity that could conflict with proper execution of the investment program or could impair the ability to make impartial investment decisions.

## V. Internal Controls

The Chief Financial Officer and Treasurer are responsible for establishing and maintaining an internal control structure to provide reasonable assurance that:

- a. Deposits and investments are safeguarded against loss from unauthorized use or disposition;
- b. Transactions are executed in accordance with management's authorization;
- c. Transactions are recorded properly;
- d. Transactions are managed in compliance with applicable laws and regulations governing public funds.

## VI. Designation of Depositories

1. The Agency authorizes the following banks for the deposit of moneys up to the maximum amounts:

<b>Depository Name</b>	<b>Maximum Amount</b>
M&T Bank	\$10,000,000
Solvay Bank	\$10,000,000

2. The Agency will review the Designation of Depositories on an annual basis.

3. To be an investment partner of the Agency the banking institution must readily honor checks drawn on Agency accounts. The payee need not maintain an account at that bank; however, appropriate identification must be provided.

## **VII. Purchase of Investments**

1. The Chief Financial Officer and Treasurer, or his/her designee, are authorized to contract for the purchase of investments.

2. All purchased obligations, unless registered or inscribed in the name of the local government, shall be purchased through, delivered to and held in the custody of a bank or trust company. Such obligations shall be purchased, sold or presented for redemption or payment by such bank or trust company only in accordance with prior written authorization from the officer authorized to make the investment. All such transactions shall be confirmed in writing to the Onondaga County Industrial Development Agency by the bank or trust company. Any obligation held in the custody of a bank or trust company shall be held pursuant to a written custodial agreement as described in General Municipal Law, §10.

3. **Repurchase Agreements.** Repurchase Agreements (“Repos”) are permitted. A Repos is a transaction in which the Agency purchases authorized securities from a trading partner. Simultaneously, the Agency agrees to resell and the trading partner agrees to repurchase the securities at a future date. The price and date is set at the time of the initial purchase.

a. Repurchase Agreements are authorized subject to the following restrictions:

i. Repurchase Agreements must be entered into subject to a written master repurchase agreement.

ii. Securities owned by the Agency must be held by a third party bank or trust company, acting as custodian for the securities.

iii. The custodian shall be a party other than the trading partner.

Authorized securities shall be limited to obligations of both U.S. Government and U.S. Agencies.

4. **Permitted Investments.** The Agency authorizes the Chief Financial Officer and Treasurer to invest moneys not required for immediate expenditure for terms not to exceed its projected cash flow requirements in the following types of investments:

a. Special time deposit accounts in an authorized banking depository or trust company secured in the same manner prescribed by General Municipal Law (“GML”) § 10.

b. Certificates of Deposit.

c. Obligations of the United States of America.

- d. Obligations guaranteed by agencies of the United States of America, where the payment of principal and interest is guaranteed by the United States of America.
- e. Obligations of the State of New York.
- f. Obligations issued pursuant to Local Finance Law § 24 or § 25 (RANS & TANS) of municipalities, school districts or district corporations.
- g. Obligations of public benefit corporations, public housing authorities and urban renewal agencies.

5. **Redemption Dates.** All investment obligations shall be redeemable on respective maturity dates as determined by the Chief Financial Officer and Treasurer to meet expenditures for purposes determined by the Agency.

### **VIII. Collateralizing Deposits**

All deposits of the Agency, including certificates of deposit and special time deposits, in excess of the amount insured under the provisions of the Federal Deposit Insurance Act shall be secured by “Eligible Collateral”. Eligible Collateral consists of any one, or combination, of the following:

- a. By a pledge of “eligible securities” with an aggregate “market value” as provided by GML § 10, equal to the aggregate amount of deposits.
- b. By an eligible surety bond payable to the Agency for an amount at least equal to 100% of the aggregate amount of deposits and the agreed upon interest, if any, executed by an insurance company authorized to do business in New York State, whose claims-paying ability is rated in the highest rating category by at least two nationally recognized statistical rating organizations.

All securities pledged to secure deposits shall be held by a third party bank or trust company and shall be held pursuant to a written Custodial Agreement. In order to provide the Agency with a perfected security interest the Custodial Agreement must contain all the necessary provisions, including the following,

- a. A security provision providing that the collateral is being pledged by the bank or trust company as security for the public deposits. It shall also provide the conditions under which the securities may be sold, presented for payment, substituted or released and the events that will enable the Agency to exercise its rights against the pledged securities.
- b. That the securities held by the authorized bank or trust company, as agent of and custodian for the Agency, shall be placed separate and

apart from the general assets of the custodial bank or trust company. They will not, in any circumstances, be commingled with or become part of the security for any other deposit or obligations.

c. That the custodian shall confirm the receipt, substitution or release of the securities held on behalf of the Agency.

d. That the types of collateral used to secure Agency deposits must be in accordance with the most current legislation authorizing various types of collateral, and approved by the Agency.

e. That the Agency requires an annual update on third party collateral security.

f. That the Agency prohibits use of a sub-custodian.

g. That the Custodian Bank must be a member of the Federal Reserve Bank.

#### **IX. Diversification.**

It is the policy of the County of Onondaga Industrial Development Agency to diversify its deposits and investments by financial institution, by investment instrument, and by maturity scheduling.

#### **X. Standards for Qualification of Investment Bankers, Brokers & Other Investment Advisors.**

The Agency shall maintain a list of financial institutions and dealers approved for investment purposes and establish appropriate limits to the amount of investments, which can be made with each financial institution or dealer. All financial institutions with which the local government conducts business must be credit worthy. Banks shall provide their most recent Consolidated Report of Condition (Call Report) at the request of the Agency. Security dealers not affiliated with a bank shall be required to be classified as reporting dealers affiliated with the New York Federal Reserve Bank, as primary dealers. The Agency Treasurer, as Chief Financial Officer, or his/her designee, having custody of money, is responsible for evaluating the financial position and maintaining a listing of proposed depositories, trading partners and custodians. Such listing shall be evaluated at least annually. The Agency Treasurer, as Chief Financial Officer, or his/her designee, having custody of money, may use credit reporting agencies to determine the credit worthiness of trading partners.

Investments in time deposits and certificates of deposits are to be made with banks or trust companies. Their annual reports shall be reviewed by the Agency Treasurer as Chief Fiscal Officer to determine financial strength.

## **XI. Operations, Audit and Reporting**

The Chief Financial Officer and Treasurer, or such designated designee, is authorized to contract for the purchase of all securities and execute contracts for Repurchase Agreements and Certificates of Deposit on behalf of the Agency. Oral directions concerning the purchase of securities shall be confirmed in writing. The Agency shall pay for purchased securities upon the delivery or book-entry thereof.

**3. Reporting.** The Treasurer, Assistant Treasurer, or other staff member shall provide a monthly Investment Review to the Agency, noting the inventory of existing investments, new investments and the selection of investment bankers, brokers, agents, dealers or auditors.

**4. Annual Audit.** The Agency shall have an independent audit of its investments conducted annually at the time independent auditors conduct the annual financial audit of the accounts and affairs of the Agency. The results of such audit shall be made available to the Agency Board at the time of the annual review and approval of the investment guidelines of the Agency.

**5. Annual Report.** Annually, the Agency shall prepare and approve an investment report containing (i) the investment guidelines, (ii) amendments to the since the last annual investment report, (iii) results of the annual independent audit, (iv) investment income record of the Agency, and (v) a list of the total fees, commissions and other charges paid to each investment banker, broker, agent, dealer, and advisor rendering investment associated services since the last annual investment report. The Agency shall provide such report to the Chief Executive Officer and Chief Fiscal Officer of the municipality for the County of Onondaga, and may include this report as part of other annual reports.

## **XII. AMENDMENT & ANNUAL REVIEW**

The Agency shall annually review and approve these investment guidelines, and may amend these investment guidelines from time to time in accordance with the provisions of Article 9, Title 7 of the Public Authorities Law.



**ONONDAGA COUNTY**  
INDUSTRIAL DEVELOPMENT AGENCY

**PROCUREMENT POLICY**

Amended September 13, 2011

Amended January 15, 2013

Amended July 20, 2016

Amended August 2, 2017

**I. METHODS FOR PROCUREMENT**

- A. All expenditures by OCIDA (the Agency) shall be approved or ratified by the Board of Directors.
- B. For the procurement of goods and services with value of less than \$5,000, the Agency shall seek a verbal quotation from the provider or providers of the good or service that best meet the standards of efficiency, timeliness, practicality, and convenience. Given these objectives, a price quote from a single vendor may be sufficient.
- C. For the procurement of goods and services with value greater than Five-Thousand (\$5,000), the Agency shall seek quotations from not less than three vendors, if available, and shall select the least expensive qualified vendor (qualifications to be determined by the Board) from those who respond to the request for quotations.
- D. In accordance with NYS purchasing law, OCIDA will follow guidance regarding the bid limits issued by the general municipal law for public bids and RFP's.
  - a. A Request for Proposal issued to three or more qualified vendors is in accordance with the procurement policy.
  - b. A Public Bid is in accordance with the procurement policy.
- E. Agency joint funding: Where the Agency is a partial contributor to the acquisition of a good or service, the Agency shall work in consultation with the other funding parties. Procurement methods satisfactory to involved parties shall be agreed to and implemented.
- F. Notwithstanding anything contained herein to the contrary, the Agency may, at its sole discretion, authorize the purchase of any goods or services from lists developed by the County of Onondaga or the State of New York or the United States Government to procure goods or services on behalf of municipalities. Goods and services on such lists are determined to be least expensive and from a qualified vendor.

## **II. EXCEPTIONS TO METHODS OF PROCUREMENT:**

- A. When exceptions are made to the general methods of procurement it shall be indicated in writing and approved by the Board.
- B. It is the policy of the Agency to permit the sole source of a good or service contract, where issues of timeliness, or necessity which could not have been reasonably foreseen, preclude the solicitation of quotations.
- C. The Agency may also sole source a good/service contract, when one vendor has substantial prior experience relative to a project and it deemed in the best interest of the Agency to only consider that one vendor.
- D. Circumstances which may justify award to other than the least expensive qualified vendor include, but are not limited to, knowledge, delivery requirements, quantity, and past vendor performance.

## **III. PROFESSIONAL SERVICES**

For professional services exclusive to the Agency, the form of procurement will be a written statement of requirements provided by the Agency, distributed in the form of a request for professional services with responses to be in the form of a written proposal including the acknowledgement of each Agency requirement and the means by which that requirement will be fulfilled. The award of the purchase of professional services will be in the form of a resolution of the Agency designating a specific provider for professional services.

It is policy of the Agency to permit the sole source of legal services contracts for bond counsel and special counsel in the event of conflicts of interest by general counsel.

## **IV. LOCAL PREFERENCE**

It is the policy of the Agency that to the extent practicable to use suppliers of goods and services within Onondaga County as the provider of services to the Agency. Every effort will be made to include vendors within the County on any contact list in any procurement process.

## **V. ELECTION OF A PURCHASING OFFICER**

It is the policy of the Agency to elect a Purchasing Officer once a year, for a one (1) year term. The Purchasing Officer will be responsible for sourcing equipment, goods and services and managing the vendors of the Agency. In the event the Purchasing Officer is unable to fulfill the one year commitment, the Executive Director of the Agency has the authority to appoint a replacement Purchasing Officer to complete the term.



## PROPERTY DISPOSITION GUIDELINES

### ARTICLE 1. DEFINITIONS

For the purposes of these Guidelines, unless a different meaning is required by the context:

Section 1.1 "Contracting Officer" shall mean the officer or employee of the Agency who shall be appointed by resolution of the members of the Agency to be responsible for the disposition of property.

Section 1.2 "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal or real property in accordance with Section 2897 of the Public Authorities Law.

Section 1.3 "Property" shall mean personal property in excess of \$5,000 in value, real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

### ARTICLE 2. DUTIES

Section 2.1 The Agency shall:

(a) maintain adequate inventory controls and accountability systems for all property under its control;

(b) periodically inventory such property to determine which property shall be disposed of;

(c) produce a written report of such property in accordance with Section 2.2;

(d) transfer or dispose of such property as promptly as possible in accordance with Section 2897 of the Public Authorities Law.

Section 2.2 The Agency shall

(a) publish, not less frequently than annually, a report listing all real property of the Agency. Such report shall consist of a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the Agency and the name of the purchaser for all such property sold by the Agency during such period.

(b) deliver copies of such report to the Comptroller, the Director of the Budget, the Commissioner of General Services, and the Legislature.



(c) review and approve these guidelines annually and file with the Comptroller a copy of the most recently reviewed and approved guidelines by March 31 of each year.

### ARTICLE 3 DISPOSITION OF PROPERTY

Section 3.1 Supervision and Direction. Except as otherwise provided in this section, the Contracting Officer shall have supervision and direction over the disposition of property of the Agency. The Agency shall have the right to dispose of its property for any valid corporate purpose.

Section 3.2 Custody and Control. The custody and control of the property of the Agency, pending its disposition, and the disposal of such property, shall be performed by the Agency or by the Commissioner of General Services when so authorized under this section.

Section 3.3 Method of Disposition. Subject to Section 2896 of the Public Authorities Law, the Agency may dispose of its property for not less than the fair market value of such property by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Contracting Officer deems proper, and it may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this section. Provided, however, that no disposition of real property, any interest in real property, or any other property which because of its unique nature is not subject to fair market pricing shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction.

Section 3.4 Sales by the Commissioner of General Services. When it shall be deemed advantageous to the State of New York, the Agency may enter into an agreement with the Commissioner of General Services where under such Commissioner may dispose of property of the Agency under terms and conditions agreed to by the Agency and the Commissioner of General Services. In disposing of any such property of the Agency, the Commissioner of General Services shall be bound by the terms of this section and references to the Contracting Officer shall be deemed to refer to such Commissioner.

Section 3.5 Validity of Deed, Bill of Sale, Lease, or Other Instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of the Agency, purporting to transfer title or any other interest in property of the Agency under these Guidelines shall be conclusive evidence of compliance with the provisions hereof insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to the closing.

Section 3.6 Bids for Disposal; Advertising; Procedure; Disposal by Negotiation; Explanatory Statement.

(a) All disposals or contracts for disposal of property of the Agency made or authorized by the Contracting Officer shall be made after publicly advertising for bids except as provided in Section 3.6(c).

(b) Whenever public advertising for bids is required under Section 3.6(a):

(i) the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property;

(ii) all bids shall be publicly disclosed at the time and place stated in the advertisement; and

(iii) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the state, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

(c) Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to Section 3.6(a) and (b) but subject to obtaining such competition as is feasible under the circumstances, if:

(i) the personal property involved is of a nature and quantity which, if disposed of under Section 3.6(a) and (b), would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;

(ii) the fair market value of the property does not exceed fifteen thousand dollars (\$15,000.00);

(iii) bid prices after advertising therefor are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;

(iv) the disposal will be to the state or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(v) the disposal is for an amount less than the estimated fair market value of the property, the terms of such disposal are obtained by public auction or negotiation, **the disposal of the property is intended to further the public health, safety or welfare or an economic development interest of the state or a political subdivision** (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits), the purpose and the terms of such disposal are documented in writing and approved by resolution of the board of the public authority;

or

(vi) such action is otherwise authorized by law.

(d) (i) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:

(A) any personal property which has an estimated fair market value in excess of \$15,000;

(B) any real property that has an estimated fair market value in excess of \$100,000, except that any real property disposed of by lease or exchange shall only be subject to clauses (C) through (E) of this subparagraph;

(C) any real property disposed of by lease for a term of five (5) years or less, if the estimated fair annual rent is in excess of \$100,000 for any of such years;

(D) any real property disposed of by lease for a term of more than five (5) years, if the total estimated rent over the term of the lease is in excess of \$100,000;  
or

(E) any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

(ii) Each such statement shall be transmitted to the persons entitled to receive copies of the report required under Section 2896 of the Public Authorities Law not less than 90 days in advance of such disposal and a copy thereof shall be preserved in the files of the Agency.



## TRAVEL POLICY

Amended November 6, 2012

### Purpose & Applicability

This policy furnishes the requirements for obtaining reimbursement of authorized and necessary travel expenses incurred in the pursuit of Agency business. These guidelines apply to members of the Agency, staff employed directly by the Agency, and officers of the Agency when travel costs are directly reimbursed by the Agency.

### Requirements

A. Prior notice to the Chairman is needed for non-routine Agency-related travel. This includes conventions, conferences, schools, pre-planned meetings, etc. that involve an overnight stay, are out of the boundaries of the County of Onondaga and Cayuga, Cortland, Madison and Oswego ("Contiguous Counties"), or require a registration fee in excess of \$100.00. Unless directed by the Chairman, travel that meets any of these criteria requires the preparation of a **Statement of Travel Purpose and Expenses** form signed by the individual and submitted in advance to the Chairman of the Agency.

Notice is not necessary for routine Agency-related travel. Routine Agency-related travel is defined as a day trip within County of Onondaga or its Contiguous Counties in which expenses will be limited to mileage or rental car reimbursement and meals, and will total less than \$100. The imputed cost calculation will be based on the Agency's mileage expense allowance rate applied to the estimated miles of the trip, and will be recorded on the Statement of Travel Purpose form.

For travel to and attendance at Agency functions within Onondaga County, each Agency member and staff shall be reimbursed for actual expenses. This payment shall apply to regular and special Agency meetings, Agency public hearings, study sessions, required educational sessions, and any other event with a purpose primarily related to Agency business.

## **Travel Expenses**

Reimbursable expenses are considered to be those which are actual, necessary, and reasonable. The Agency will reimburse board members and staff for these expenses provided that the required supporting documentation is presented with the reimbursement request.

A. Registration fees associated with meetings and conferences are reimbursable. These fees may be paid in advance of the event if required. When an Agency member or staff pays a registration fee a receipt must be presented at the time of reimbursement.

B. Transportation should be arranged in the most economic manner possible. Air travel should be by coach or economy accommodations and made in advance to take advantage of lower fare rates.

C. Privately owned vehicle mileage reimbursement is authorized when travel is performed in the pursuit of Agency business and the conditions of the travel, including the convenience of Agency members, make it either economical or equal to the cost of a common carrier. A car rental fee may prove to be more economical than reimbursement for mileage on privately owned vehicles, and shall be used if it results in a lower expense to the Agency. Reimbursement of rental cars will be limited to the full size rate or lower. When privately owned vehicles are used, the mileage reimbursement rate will be at a rate allowed by the IRS. The rules of reason and necessity will be applied to travel routes.

D. Reimbursements for parking and tolls incurred on Agency business will be allowed when receipts are provided to substantiate the charges.

E. Lodging rates must be actual and supported by an itemized, paid bill for reimbursement. If sales tax exemption applies (New York State), then a completed Tax Exemption Certificate must be presented when the employee registers. Reimbursement will not be made on sales tax paid.

F. Meal rates in New York State will be on a per diem basis unless restricted by other laws or regulations, or reimbursed as part of a conference or seminar up to a maximum per diem rate of \$50.00. The per diem rate outside of NYS and within New York City will be based on the United States General Services Trust (GSA) per diem meal and incidental rates posted on its web site ([www.gsa.gov](http://www.gsa.gov)).

### Daily Maximum per Meal

Leave before 7:00am or return after 8:00am, breakfast will be allowed at an allowance of \$10.00

Leave before 11:30am or return after 2:00pm, lunch will be allowed at an allowance of \$15.00

Leave before 6:00pm or return after 7:00pm, dinner will be allowed at an allowance of \$25.00

The above rates include gratuity and applicable taxes.

Meals associated with a conference or seminar can be reimbursed over the per diem rate provided that a flyer, brochure, or itinerary from the conference is attached as supporting documentation stating the cost of the meal, and the staff provides a paid receipt. This also applies to conferences and seminars that are held within Onondaga County.

Per Diem rates for meals included in the registration fee and/or provided as part of a conference or seminar will not be reimbursed.

G. Reimbursement for the tipping of taxi cab drivers shall not exceed fifteen percent (15%) of the total cost of the cab trip. A receipt must be provided to receive reimbursement. Tipping for any other activity or service rendered may not be claimed.

H. Telephone and postage charges relating to official business will be reimbursed provided a statement is furnished showing the service was rendered, as well as the date of service.

I. Non-reimbursable expenses include laundry, valet service, entertainment, alcohol, or personal items.

Submission for travel reimbursement shall be in written form and include the claimant's name, the date each item of expense was incurred and the places between which travel was performed, and a short explanation as to the purpose of the travel.

### Summary

Law has established the rules of reasonable, necessary, and actual regarding any expenditure and all claims will be viewed using this criterion. Except for meals, whenever receipts are available, claimant must provide them.

### **Business Entertainment Expenses**

Reimbursable expenses for entertainment must be directly associated with the promotion of Onondaga County. Promotional activities include, but are not limited to, economic development and tourism.

Allowable expenses include meals and refreshments, catering services, facility rental, transportation, lodging, and tickets for local events. Alcohol may be reimbursed, but its use should be kept to a minimum.

### **Miscellaneous Non-travel Expenses**

Refreshments, meals, and accommodations associated with meetings, training and retreats attended primarily by Agency members and outside personnel may be reimbursed. All receipts and supporting documentation must accompany the reimbursement request.

Awards and refreshments for Agency member and employee recognition ceremonies may be reimbursed.

Non-reimbursable expenses:

- Social events such as birthdays, holiday parties, and the like

- Food and refreshments for office events

- Cards and flowers for office events or bereavements

- Supplies for parties, water coolers and coffee breaks

- Charitable contributions or events

- Mileage to non-essential functions

UNIFORM TAX  
EXEMPTION POLICY  
Drafted February 1994  
Readopted March 1999  
Amended November 13, 2008  
Amended April 9, 2009  
Amended June 11, 2009  
Amended July 9, 2009  
Amended April 14, 2011  
Amended September 13, 2011  
Amended July 17, 2012  
Amended December 11, 2012  
Amended July 26, 2013  
Amended July 20, 2016  
Amended August 20, 2019  
Amended September 15, 2020

Section I. Purpose

A. Purpose. Pursuant to Section 874(4) of Article 18-A of the General Municipal Law (the “GML”) of the State of New York (the “State”), the Onondaga County Industrial Development Agency (the “Agency”) hereby establishes a uniform tax exemption policy (“UTEP”) to provide guidelines for the claiming of real property, mortgage recording, and sales and use tax exemptions. The Agency may grant benefits on a case by case basis for a project expected to have significant economic impact on Onondaga County as determined in the sole discretion of the Agency members.

Section II. Real Property Tax Abatements

A. General Policy. The Agency may provide for the provision of real property tax abatements to qualified applicants. The granting of such abatements requires the Agency and the project owner or occupant (the “Company”) to enter into a payment in lieu of taxes agreement (“PILOT”), which provides for payments in lieu of taxes to the taxing jurisdictions generally in an amount less than what the real property taxes would be if the Agency involvement did not cause the project to be tax exempt.



The Agency's standard policy is to provide for payments following a schedule of steadily increasing fixed payments calculated by applying a sliding scale to values determined using current tax rates and the current assessed value of the project.

B. Special Assessments and Levies. No project shall be exempt from special assessments and special ad valorem levies lawfully levied and/or assessed against the project.

C. PILOT Qualification. A project must be engaged in one of the following below listed activities to be eligible for a Job Retention, Job Retention with MWBE Enhancement, Job Creation, Job Creation with MWBE Enhancement, or either Repatriation PILOT Scales later detailed in this UTEP. Qualifying activities include: manufacturing, processing, remanufacturing, assembly, warehousing, back office, wholesale, distribution, product research and development, professional/scientific/technical services, tourism, commercial housing or a corporate national or regional headquarters, or an energy project.

D. PILOT Valuation. Payments in lieu of taxes shall be determined pursuant to a written PILOT Agreement between the Agency and the Company. The Company shall pay to the Agency, or its designee, the amount calculated pursuant to the applicable PILOT Agreement. Each PILOT payment shall be allocated among the affected taxing jurisdictions in proportions equal to the percent of real property taxes which would have been received by each affected taxing jurisdiction had the project not been tax exempt. Variations in the proportions shall be done only with the prior written consent of all the affected taxing jurisdictions. Each PILOT agreement shall take effect during the tax year immediately following the taxable status date after the Agency acquires an interest in the project unless otherwise agreed upon by the Agency.

1. PILOT payments shall be equal to the sum of the following:
  - i. Fixed payments, calculated by the Agency, using an estimated current value and current tax rate of the land both as of the date of the application for Project benefits; plus
  - ii. Fixed payments, calculated by the Agency, using an estimated value of the improvements and current tax rate both at the time of the application for Project benefits, which value is then multiplied by the applicable percentage in the applicable PILOT Exemption Scale.

### **Job Retention PILOT Exemption Scale**

The Job Retention PILOT Exemption Scales is available to a Company undertaking a project in Onondaga County where the project goal is to enhance the competitiveness of the Company through strategic investments. For these projects, additional capital investments by the Company are necessary to preserve existing jobs.

Job Retention PILOT Exemption Scale		Job Retention Community Benefit PILOT Exemption Scale	
Year	Exemption %	Year	Exemption %
1	100%	1	100%
2	90%	2	100%
3	80%	3	100%
4	70%	4	90%
5	60%	5	80%
6	50%	6	70%
7	40%	7	60%
8	30%	8	50%
9	20%	9	40%
10	10%	10	30%
		11	20%
		12	10%

**Job Retention PILOT with MWBE Enhancement Exemption Scale**

To qualify for an MWBE Enhancement PILOT Exemption Scale, a Company must demonstrate compliance with the MWBE Requirements, as noted below, from the date of project closing to 5 years from project completion. The MWBE enhancement requirements require that at least 15% of the Company’s new hires in this time period (i) be minorities and (ii) at least 30% be minorities or women. If the Company can demonstrate this, they are eligible to return to the Agency and request this enhancement to their PILOT exemption scale. The Agency has sole and absolute discretion with granting this request.

Job Retention PILOT with MWBE Enhancement Exemption Scale

Job Retention and Community Benefit PILOT with MWBE Enhancement Exemption Scale

Year	Exemption %
1	100%

Year	Exemption %
1	100%

2	90%	2	100%
3	80%	3	100%
4	70%	4	90%
5	60%	5	80%
6	50%	6	70%
7	<u>45%</u>	7	<u>65%</u>
8	<u>35%</u>	8	<u>55%</u>
9	<u>25%</u>	9	<u>45%</u>
10	<u>15%</u>	10	<u>35%</u>
		11	20%
		12	10%

**Job Creation PILOT Exemption Scale**

The Job Creation PILOT Exemption Scale is available to a Company undertaking a project in Onondaga County where the project will create jobs and/or enhance the competitiveness of the Company by creating or expanding a business.

To qualify for the Job Creation PILOT Exemption Scale, the Company must represent that it will create and/or increase employment at the project site by at least 25% for an existing site or increase the applicant’s Onondaga County employee headcount by 25%.

**Job Creation PILOT Exemption Scale  
(At least 25% increase in total jobs)**

**Job Creation Community Benefit PILOT Exemption  
Scale (At least 25% increase in total jobs)**

Year	Exemption %
1	100%
2	100%
3	90%
4	90%
5	80%
6	80%
7	70%
8	70%
9	60%
10	60%
11	50%
12	40%
13	30%
14	20%
15	10%

Year	Exemption %
1	100%
2	100%
3	100%
4	100%
5	90%
6	90%
7	80%
8	80%
9	70%
10	70%
11	60%
12	60%
13	50%
14	40%
15	40%
16	30%

17	20%
18	10%

**Job Creation PILOT with MWBE Enhancement Exemption Scale**

A Project with a Job Creation PILOT exemption scale may qualify for an MWBE Enhancement Exemption Scale if the Company is able to show compliance with the MWBE enhancement requirements from the date of project closing to 5 years from project completion. The MWBE enhancement requirements require that at least 15% of the Company’s new hires in this time period (i) be minorities and (ii) at least 30% be minorities or women. If the Company can demonstrate this, the Company is eligible to return to the Agency and request this enhancement to its Exemption Scale. The Agency has sole and absolute discretion regarding this request.

Job Creation PILOT (At least 25% of jobs must be new jobs) with MWBE Enhancement Exemption Scale

Job Creation Community Benefit PILOT (At least 25% of jobs must be new jobs) with MWBE Enhancement Exemption Scale

Year	Exemption %	Year	Exemption %
1	100%	1	100%
2	100%	2	100%
3	90%	3	100%
4	90%	4	100%
5	80%	5	90%
6	80%	6	90%
7	<u>80%</u>	7	<u>85%</u>
8	<u>80%</u>	8	<u>85%</u>
9	<u>75%</u>	9	<u>75%</u>
10	<u>65%</u>	10	<u>75%</u>
11	50%	11	60%
12	40%	12	60%
13	30%	13	50%
14	20%	14	40%
15	10%	15	40%
		16	30%
		17	20%
		18	10%

**Repatriation/Reshoring PILOT Exemption Scale**

For exceptionally impactful projects a 30 year PILOT is available. To qualify, projects must meet these three requirements:

1. Development/expansion in a strategically important industry sector as determined by the Agency board in its sole and absolute discretion;
2. Total Project Cost greater than \$250mm; and
3. Job creation greater than 500 full time permanent jobs over 5 years.

For smaller projects a 20 year PILOT is available. The proposed parameters are:

1. Development/expansion in a strategically important industry sector as determined by the Agency board in its sole and absolute discretion;
2. Total Project Cost less than or equal to \$250mm; or,
3. Job creation is less than 500 jobs over 5 years.

Repatriation PILOT Exemption Scale : Total Project Cost exceeds \$250 mm and Job Creation is greater than 500 jobs

Repatriation PILOT Exemption Scale : Total Project Cost is less than or equal to \$250mm or Job Creation is less than 500 jobs

Year	Exemption %
1	100%
2	100%
3	100%
4	100%
5	100%
6	100%
7	100%
8	100%
9	100%
10	100%
11	100%
12	100%
13	100%
14	100%
15	100%
16	100%
17	100%
18	100%
19	100%
20	100%
21	100%
22	90%
23	80%
24	70%
25	60%
26	50%
27	40%
28	30%
29	20%
30	10%

Year	Exemption %
1	100%
2	100%
3	100%
4	100%
5	100%
6	100%
7	100%
8	100%
9	100%
10	100%
11	100%
12	90%
13	80%
14	70%
15	60%
16	50%
17	40%
18	30%
19	20%
20	10%

E. Community Benefit Incentive PILOT. The Community Benefit Incentive PILOT may offer a more generous PILOT exemption scale to a project that meets one of the following thresholds:

1. **Brownfield.** The project is a brownfield site as determined by the New York State Department of Environmental Conservation or United States Environmental Protection Agency. Sites located within Brownfield Opportunity Areas may also be considered.

2. **Adaptive Reuse.** The criteria for “adaptive reuse” is based on the following:

- i. the age of the structure;
- ii. the structure presents a significant structural challenge to redevelopment or presents a significant public safety hazard, as determined by the Agency;
- iii. the structure has been vacant or underutilized for a minimum of 2 years prior to application to the Agency;
- iv. the net increase in the facility’s assessed value after project completion exceeds 30 percent;
- v. the project demonstrates a financial obstacle to development without the Agency’s assistance;
- vi. the project is listed on the State or the National Register of Historic Places; and
- vii. the site or structure is presently delinquent in property tax payments.

3. **LEED Certified.** The project has received a Gold or Platinum LEED Certification from the US Green Building Council. To accommodate the LEED Certification Commissioning Process without penalizing a project, a project seeking LEED Certification may receive the applicable base PILOT Exemption Scale for up to 2 years after the project is completed and be transitioned for the remaining period to the Community Benefit PILOT Schedule upon receiving LEED Certification. If the project has not received LEED Certification within the 2-year period, the applicable PILOT Exemption Scale will remain in effect for an additional 8 years.

4. Community Benefit Incentive PILOT Valuation.
  - a. PILOT payments shall be equal to the sum of the following:
    - i. Fixed payments, calculated by the Agency, using an estimated current value and current tax rate of the land both as of the date of the application for Project benefits; plus
    - ii. Fixed payments, calculated by the Agency, using an estimated value of the improvements and current tax rate both at the time of the application for Project benefits, which value is then multiplied by the applicable percentage in the Community Benefit Incentive PILOT Exemption Scale.

The Community Benefit Incentive PILOT Exemption Scale are shown on pages 7-G.3, 7-G.4, 7-G.5, and 7-G.6

F. Energy Project PILOT. Because of interest in our community for renewable energy development the Agency may, in its sole and absolute discretion, choose to grant real property, mortgage recording and sales and use tax exemptions to renewable energy projects. The following selection criteria and PILOT structure may be applied by the Agency to renewable energy related projects.

1. Selection Criteria
  - i. Is the project in an underutilized or undesirable/ difficult to develop location? (e.g. landfill, brownfield, distressed land)
  - ii. Is there demand in the area?
  - iii. Is there support from local officials?
  - iv. Does existing infrastructure support the project?
  - v. Does the size of the project warrant a PILOT?
2. PILOT Structure:
  - i. Term: At the Agency's sole and absolute discretion, the term of the PILOT may be extended to accommodate the financing requirements of a project.

- ii. **PILOT Calculation:** To estimate the annual PILOT payment, the Agency may use a formula expressed as a dollar value per AC Mega Watt (MW) multiplied by the MW generated to arrive at a PILOT payment to be paid by the Company each year. The Agency will be responsible for determining what the appropriate dollar value per MW is for each project. Mathematically, the formula can be expressed as: (AC MW Generated) X (Dollar Value per MW) = Total PILOT Payment for a given year.

G. Apartment Projects. Based on the need in our community for affordable housing for the workforce, the Agency may, in its sole and absolute discretion, choose to grant real property, mortgage recording and sales and use tax exemptions to apartment style housing projects. Apartment Projects real property tax benefits may be granted, in the Agency's sole and absolute discretion, in accordance with the Job Retention or Job Creation Exemption Scale contained in this UTEP. In addition to the requirements listed in the project evaluation and selection policy contained herein, the Agency may consider additional criteria when providing benefits to apartment style housing projects including, but is not limited to:

- i. Is the project being built in a blighted area?
- ii. Is the housing fulfilling an unmet need in the area?
- iii. Is there a market study documenting demand for such housing?
- iv. Is there support from local officials?
- v. Is the project considered needed infill in an already populated area?
- vi. Does the project provide walkability to municipality centers?
- vii. Is any additional county providing infrastructure necessary to service the project?
- viii. Is the project a part of a larger mixed-use development?



### Section III. PILOT Deviations

A. PILOT Deviations. The Agency may deviate, on a case by case basis, from the PILOT Exemption Scale as described above.

B. Notification of Taxing Jurisdictions. Any deviations from this UTEP shall require a written notification by the Agency to the chief executive officer of each affected taxing jurisdiction in advance of the meeting at which the proposed deviation will be considered.

C. Deviation Considerations. The Agency in its sole and absolute discretion may consider the following factors in the determining whether a project may deviate from the PILOT Exemption Scale contained in this UTEP , no single one of which is determinative:

1. The nature of the proposed project (e.g., manufacturing, commercial, etc.);
2. The nature of the property before the project begins (e.g., vacant land, vacant buildings);
3. The economic condition of the area at the time of the application;
4. The extent to which a project will create or retain permanent, private sector jobs;
5. The estimated value of the tax exemptions to be provided;
6. The impact of the project and proposed tax exemptions on affected tax jurisdictions;
7. The impact of the proposed project on existing and proposed businesses and economic development projects in the vicinity;
8. The amount of private sector investment generated or likely to be generated by the proposed project;
9. The demonstrated public support for the proposed project;

10. The likelihood of accomplishing the proposed project in a timely fashion;
11. The effect of the proposed project upon the environment
12. The extent to which the proposed project will require the provision of additional services including, but not limited to, additional educational, transportation, police, emergency medical or fire services;
13. The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located; and
14. The extent to which the proposed project will provide a benefit (economic or otherwise) not otherwise available within the municipality in which the project is located.

#### Section IV. Sales and Use Tax Exemptions

A. Sales and Use Tax Exemption. The Agency may grant an exemption from State and local sales and use taxes to a project to the full extent permitted by the State.

1. Construction Materials, Equipment and Furnishings. Purchases of construction materials and equipment and of project related equipment, furnishings and other items of tangible personal property may be fully exempt from State and local sales and use taxes until the project is completed.

2. Operating and Maintenance Expenses. Operating and maintenance expenses incurred in connection with a project are not exempt from State and local sales and use tax.

3. Exempt Certificate. All project applicants must agree in writing to timely file with the New York State Department of Taxation an annual statement of the value of all sales and use tax exemptions.

#### Section V. Mortgage Recording Tax Exemptions

A. Permitted Exemptions. The Agency may grant an exemption from the mortgage recording tax to a project to the full extent of the law. The Agency may not

grant an exemption from the portion of the mortgage recording tax that is payable to the Central New York Regional Transportation Authority.

## Section VI. Recapture of Agency Benefits

A. Information to be Provided by Companies. Each Company agrees that to receive benefits from the Agency it must, whenever requested by the Agency or required under applicable statutes or project documents, provide and certify or cause to be provided and certified such information concerning the Company, its finances, its employees and other topics which shall, from time to time, be necessary or appropriate, including but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

B. Recapture of Benefits. It is the policy of the Agency to recapture the value of a PILOT, any sales and use tax exemption, and mortgage recording tax exemption in accordance with the Laws of the State and the provisions contained herein. Before receiving benefits, the Company must attest in writing to its understanding of, and agreement to, the recapture provisions contained in State Law and herein. To the extent permitted by State law, the recapture provisions contained herein may be modified from time to time by the Agency at its sole discretion.

### C. Recapture of PILOT, Sales and Use Tax and Mortgage Recording Tax Exemption Benefits

1. Jobs. If the number of full time equivalent jobs to be maintained or created in connection with a project falls below 75% of the number projected in the Company's application to the Agency, or if there are material violations of the project agreements, then the value of the property tax, sales and use tax and mortgage recording tax benefits extended to the project by the Agency may be subject to recapture. When deciding whether or not to recapture benefits and the amount of such recapture, the Agency may consider the potential future benefit of the business to the community.

2. Recapture Payment. The recapture payment paid by the Company to the Agency shall be determined (1) by the difference between any PILOT payments made by the Company and the property taxes that would have been paid by the Company if the property were not under the supervision, jurisdiction or control of the Agency, (2) the value of any mortgage recording tax exemption, if awarded to the Company and (3) the amount of sales and use tax that would have been paid if an exemption was not granted.

3. Recapture of the PILOT, Sales and Use Tax or Mortgage Recording Tax. The Recapture Schedule for a Payment in Lieu of Tax Agreement, Sales and Use Tax or the Mortgage Recording Tax is as follows:

Time from Project Completion	Tax Savings Recaptured
1 Year	80%
2 Years	60%
3 Years	40%
4 Years	20%
5 Years	10%

D. Distribution of the Recapture Payment. Any funds recaptured as a result of the recapture payment shall be distributed to the affected taxing jurisdictions in the same proportion as if the payments were paid or owed by the Company on the date of recapture.

E. A “Full Time Permanent Employee” shall mean

1. A full time, permanent, private sector employee on the Company’s payroll, who has worked at the project location for a minimum of thirty hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Company to other employees with comparable rank, duties and hours; or

2. Up to three part time, permanent, private-sector employees on Company’s payroll, who have worked at the project location for a combined minimum of thirty hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Company to other employees with comparable rank, duties and hours.

F. Additional Conditions Applicable to the Recapture of Sales and Use Tax Exemption Benefits.

1. Recapture Events. As of April 1, 2013, State law requires industrial development agencies to recapture sales and use tax benefits where:

i. A project is not entitled to receive the benefits;

- ii. Exemptions received exceed the amount authorized by the Agency;
- iii. Exemptions are claimed by the project for unauthorized property or services; or
- iv. A project fails to use the property in the manner required by its Agency agreements.

2. **Distribution of Sales and Use Tax.** Project operators must cooperate with the Agency in its effort to recapture all sales and use tax benefits received by the Company by promptly paying the recapture amount as determined by the Agency. The amount to be recaptured will be dictated by State Law or this UTEP Policy, whichever may be applicable. The Agency shall remit the recaptured sales and use tax benefits to the State within 30 days of receipt.

3. **Compliance Report.** Annually, the Agency will file an annual compliance report with the State detailing its recapture terms and its activities to recapture benefits, including the any attempt to recapture benefits from an Agency project.

## Section VII. Amendment or Modification

A. Amendment or Modification. The Agency, by resolution of a majority of its members and upon notice to the affected taxing jurisdictions, may amend or modify the foregoing policy, from time to time in accordance with the laws of the State.

## Section VIII. Project Evaluation and Selection Policy

A. Evaluation and Selection. Pursuant to Section 859-a (5) of the GML the Agency must adopt, by resolution of the Board, uniform project evaluation and selection criteria. This criteria will be used to determine whether the Agency should grant financial assistance to an applicant. As such, the Agency has adopted this Evaluation and Selection Policy in accordance with the applicable laws and regulations.

1. Prior to approval for financial assistance by the Agency the following actions must occur:
  - i. The applicant must provide a complete and signed application to the Agency.

ii. The Agency must assess all of the information received in connection with the application as necessary to afford a reasonable basis for the decision to provide assistance.

iii. The Agency must prepare a written cost benefit analysis identifying the following:

- a. The potential creation or retention of permanent private sector jobs, their salaries and benefit packages;
- b. The estimated value of tax exemptions;
- c. The amount of private sector investment likely to be generated by the project;
- d. The extent to which the project will provide additional sources of revenue for municipalities and school districts; and
- e. Any other public benefit that might occur due to the project.

2. The Agency must receive a statement signed by the applicant that, as of the date of the application, the project is in substantial compliance with all provisions of the GML, included but not limited to Section 862.

3. If the project would involve the removal or abandonment of a facility or facilities within the State, the Agency must notify the chief executive officers of such affected municipality or municipalities.

## **WHISTLEBLOWER POLICY**

All members, officers and employees of the Onondaga County Industrial Development Agency (the "Agency") shall observe high standards of business and personal ethics in the conduct of their duties and responsibilities. It is the responsibility of all members, officers and employees to comply with the Code of Ethics and to report violations or suspected violations in accordance with this Whistleblower Policy.

No member, officer or employee who in good faith reports a violation of the Code of Ethics shall suffer harassment, retaliation or adverse employment consequence. Anyone filing a complaint concerning a violation or suspected violation of the Code must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation of the Code of Ethics.

Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

**ANNUAL REPORTING REQUIREMENTS OF  
THE PUBLIC AUTHORITY ACCOUNTABILITY ACT**

1. **Annual Report:** Within 90 days after the end of the fiscal year (presumably by March 31) the Agency must submit an Annual Report to the chief executive officer, chief fiscal officer, chairperson of the legislative body of the local government(s) and the Authority Budget Office. A financial report must be included, and such report must include the following:

- a. operating and financial risks,
- b. grant and subsidy programs,
- c. current rating of its bonds and long term liabilities, including leases and employee benefit plans,
- d. biographical information,
- e. a requirement of a listing and description of the real property owned by the authority having a FMV in excess of \$15,000.00, and
- f. Copy of the legislation that forms the statutory basis for the authority
- g. Description of
  - i. the authority,
  - ii. its board structure,
  - iii. committees and committee members,
  - iv. lists of board meetings and attendance,
  - v. number of employees,
  - vi. descriptions of major auditory units, subsidiaries
  - vii. organizational chart
- h. list of material changes in operations and programs during the reporting year
- i. a 4 year financial plan including a current and projected capital budget and a operating budget report
- j. Board performance evaluations
- k. Description of the total amount of assets and/or services bought or sold without competitive bidding
- l. Description of material pending litigation in which the authority was a party during the reporting year

2. **Budget Report:** At least 60 days prior to the commencement of the fiscal year, a Budget Report must be submitted to the chief executive officer, chief fiscal officer, chairperson of the legislative body of the local government(s) and the Authority Budget Office. The budget report cannot be submitted more than 90 days before the commencement of the fiscal year.



3. **Audit Report:** Within 30 days after receipt by the Agency, the Agency must submit the Annual Independent Audit Report (performed by a certified public accounting firm), a Management Letter, and any other external examination of the books and accounts of the Agency, other than examinations by the State Comptroller, to the chief executive officer, chief fiscal officer, chairperson of the legislative body of the local government(s) and the Authority Budget Office.

4. **Financial Disclosure:** Board Members, officers, and employees of the Agency must file annual financial disclosure statements with the County of Onondaga Board of Ethics.

5. **Other Filings:**

a. By March 31 of each year: Property Disposal Guidelines and a Property Disposal Report (which may be prepared along with the Annual Report) for the fiscal year must be filed with the State Comptroller.

b. **Personnel Reports:** On or before the 15<sup>th</sup> of January of each year, the Agency must submit to the NYS comptroller, NYS Director of the Division of the Budget, the NYS Authorities' Budget Office, and Chairs of the NYS Assembly Ways and Means and New York State Senate Fiscal Committee..



## EXECUTIVE SESSION SUMMARY

### See also Open Meeting Law Summary

Every meeting of a public body must be open to the general public. However, an executive session may be called and business transacted thereat. An executive session is that portion of a meeting not open to the public. Attendance at an executive session shall be permitted to any member of the Agency and any other persons authorized by the Agency.

Upon motion identifying the general area(s) of the subject(s) to be considered and a majority vote of the members, an executive session may be entered into and conducted by the Agency for the following matters only:

- (a) matters which will imperil the public safety if disclosed;
- (b) any matter which may disclose the identity of a law enforcement agent or informer;
- (c) information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- (d) discussions regarding proposed, pending or current litigation;
- (e) collective negotiations pursuant to article fourteen of the civil service law;
- (f) the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- (g) the preparation, grading or administration of examinations; and
- (h) the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

The board may take action with respect the above matters during a *properly convened executive session*, however, **no action by formal vote may be taken in an executive session to appropriate public moneys**. Minutes must be taken of any action that is taken by a formal vote, and must consist of a record or summary of a final determination and the vote thereon. They do not need to include any matters not required to be made available to the public pursuant to FOIL.

**Separate from an executive session, the Agency can, in private, consult with its attorney regarding legal matters. Attorney-client privilege is an exemption from the Open Meetings Law pursuant to Section 108 of the Public Officers Law, and when an exemption under §108 applies, the Open Meeting Law does not, and the requirements that operate with respect to an executive session are not in effect.**



**RULES AND REGULATIONS GOVERNING PUBLIC ACCESS TO  
RECORDS OF THE ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY IN ACCORDANCE WITH ARTICLE 6 OF THE PUBLIC OFFICERS  
LAW OF NEW YORK STATE**

1. Purpose and Scope
  2. Designation of Records Access Officer
  3. Location
  4. Hours for Public Inspection
  5. Requests for Public Access to Records
  6. Subject Matter List
  7. Denial of Access to Records
  8. Appeals
  9. Fees
  10. Public Notice
  11. Severability
  12. Effective Date
- Attachment A

**SECTION 1. PURPOSE AND SCOPE**

- (a) The people’s right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy of confidentiality.
- (b) These regulations provide information concerning the procedures by which records may be obtained.
- (c) Personnel shall furnish to the public the information and records required by the Freedom of Information Law, Article 6 of the Public Officers Law, as well as records otherwise available by law.
- (d) Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

**SECTION 2. DESIGNATION OF RECORDS ACCESS OFFICER**

- (a) Onondaga County Industrial Development Agency (“OCIDA”) is responsible for insuring compliance with the regulations herein. OCIDA shall designate a Records Access Officer(s) and make available the contact information of the OCIDA Records Access Officer(s) to the public. The most recent name, business address and telephone number of the designated OCIDA Records Access Officer(s) can be found in Attachment A hereto.

(b) The Records Access Officer is responsible for insuring appropriate agency response to public requests for access to records. The designation of a Records Access Officer shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so.

The Records Access Officer shall insure that agency personnel:

- (1) Maintain an up-to-date subject matter list.
- (2) Assist persons seeking records to identify the records sought, if necessary, and when appropriate, indicate the manner in which the records are filed, retrieved or generated to assist persons in reasonably describing records.
- (3) Contact persons seeking records when a request is voluminous or when locating the records involves substantial effort, so that personnel may ascertain the nature of records of primary interest and attempt to reasonably reduce the volume of records requested.
- (4) Upon locating the records, take one of the following actions:
  - (i) Make records available for inspection; or,
  - (ii) Deny access to the records in whole or in part and explain in writing the reasons therefor.
- (5) Upon request for copies of records:
  - (i) Make a copy available upon payment or offer to pay established fees, if any, in accordance with section 8; or,
  - (ii) Permit the requester to copy those records.
- (6) Upon request, certify that a record is a true copy; and
- (7) Upon failure to locate records, certify that:
  - (i) OCIDA is not the custodian for such records, or
  - (ii) The records of which OCIDA is a custodian cannot be found after diligent search.

#### **SECTION 4. LOCATION**

Records shall be available for public inspection and copying at:

Onondaga County Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, NY 13202

## **SECTION 5. HOURS FOR PUBLIC INSPECTION**

Requests for public access to records shall be accepted and records produced during all hours regularly open for business.

These hours are: Monday through Friday 9 a.m. to 4 p.m.

## **SECTION 6. REQUESTS FOR PUBLIC ACCESS TO RECORDS**

(a) Requests for public access to records shall be made in writing and directed to the attention of the OCIDA Records Access Officer. Requests for access to public records may be made via regular mail, electronic mail or facsimile.

(b) Any person requesting records who seeks information consisting of a list of names and addresses must sign a certification that the list will not be used for solicitation or fundraising purposes.

(c) If records are maintained on the internet, the requester shall be informed that the records are accessible via the internet and in printed form either on paper or other information storage medium.

(d) (i) The Agency shall provide records stored in electronic format in the medium requested by a person if the Agency can reasonably make such copy or have such copy made by engaging an outside professional service.

(ii) When the Agency has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, it shall be required to do so. If a request reasonably describes records or data maintained electronically, and when extracting the data with new programming is more efficient than engaging in manual retrieval or redactions from non-electronic records, the Agency is required to install such programming rather than engage in manual retrieval or redaction of non-electronic records.

(e) A request may not be denied as being too broad, voluminous, extensive or burdensome because the Agency lacks sufficient staff to handle such a request. If the Agency is unable to handle the extent of the searching, copying, collating, programming, or other record preparation using its staff, it must hire outside help *at the expense of the requesting party*.

(f) A response shall be given within five (5) business days of receipt of a request by:

(1) informing a person requesting records that the request or portion of the request does not reasonably describe the records sought, including direction, to the extent possible, that would enable that person to request records reasonably described;

(2) granting or denying access to records in whole or in part;

(3) acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than twenty (20) business days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within twenty (20) business days from the date of such acknowledgment, providing a statement in writing indicating the reason for inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part; or

(4) if the receipt of request was acknowledged in writing and included an approximate date when the request would be granted in whole or in part within twenty (20) business days of such acknowledgment, but circumstances prevent disclosure within that time, providing a statement in writing within twenty (20) business days of such acknowledgment specifying the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part.

(g) In determining a reasonable time for granting or denying a request under the circumstances of a request, personnel shall consider the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by the agency, and similar factors that bear on the ability to grant access to records promptly and within a reasonable time.

(h) A failure to comply with the time limitations described herein shall constitute a denial of a request that may be appealed. Such failure shall include situations in which an officer or employee:

(1) fails to grant access to the records sought, deny access in writing or acknowledge the receipt of a request within five (5) business days of the receipt of a request;

(2) acknowledges the receipt of a request within five (5) business days but fails to furnish an approximate date when the request will be granted or denied in whole or in part;

(3) furnishes an acknowledgment of the receipt of a request within five (5) business days with an approximate date for granting or denying access in whole or in part that is unreasonable under the circumstances of the request;

(4) fails to respond to a request within a reasonable time after the approximate date given or within twenty (20) business days after the date of the acknowledgment of the receipt of a request;

(5) determines to grant a request in whole or in part within twenty (20) business days of the acknowledgment of the receipt of a request, but fails to do so, unless the agency provides the reason for its inability to do so in writing and a date certain within which the request will be granted in whole or in part;

(6) does not grant a request in whole or in part within twenty (20) business days of the acknowledgment of the receipt of a request and fails to provide the reason in writing explaining the inability to do so and a date certain by which the request will be granted in whole or in part; or

(7) responds to a request, stating that more than twenty (20) business days is needed to grant or deny the request in whole or in part and provides a date certain within which that will be accomplished, but such date is unreasonable under the circumstances of the request.

#### **SECTION 7. SUBJECT MATTER LIST**

(a) The Records Access Officer shall maintain a reasonably detailed current list by subject matter of all records in its possession, whether or not records are available pursuant to subdivision two of section eighty-seven of the Public Officers Law.

(b) The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

(c) The subject matter list shall be updated annually. The most recent update shall appear on the first page of the subject matter list.

#### **SECTION 8. DENIAL OF ACCESS TO RECORDS**

(a) Denial of access to records shall be in writing stating the reason therefor and advising the requester of the right to appeal to the individual or body established to determine appeals, who or which shall be identified by name, title, business address and business phone number.

(b) If requested records are not provided promptly, as required in section 5 of these regulations, such failure shall also be deemed a denial of access.

(c) The Chairperson of OCIDA shall determine appeals regarding denial of access to records under the Freedom of Information Law. The most recent name, business address and telephone number of the Chairperson of OCIDA can be found in Attachment A hereto.

(d) OCIDA may deny access to records or portions thereof that:

- (1) are specifically exempted from disclosure by state or federal statute;
- (2) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;
- (3) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;



- (4) are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
- (5) are compiled for law enforcement purposes and which, if disclosed, would:
  - (i) interfere with law enforcement investigations or judicial proceedings;
  - (ii) deprive a person of a right to a fair trial or impartial adjudication;
  - (iii) identify a confidential source or disclose confidential information relating to a criminal investigation; or
  - (iv) reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- (6) if disclosed could endanger the life or safety of any person;
- (7) are inter-agency or intra-agency materials which are not:
  - (i) statistical or factual tabulations or data;
  - (ii) instructions to staff that affect the public;
  - (iii) final agency policy or determinations; or
  - (iv) external audits, including but not limited to audits performed by the comptroller and the federal government;  
or
- (8) are examination questions or answers which are requested prior to the final administration of such questions;
- (9) if disclosed, would jeopardize an agency's capacity to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; or
- (10) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-a of the vehicle and traffic law.

(e) In accordance with the provisions of the Public Officers Law, and upon the advice of Agency Counsel, the Records Access Officer may delete (or cause to be deleted) from any record identifying details, the disclosure of which may result in an

unwarranted invasion of privacy, prior to making such record available for inspection and copying. In the event one or more deletions are made from any record the Records Access Officer shall provide written notice of that fact to the person given access to the record.

## SECTION 9. APPEALS

(a) Any person denied access to records may appeal within thirty days of a denial.

(b) The time for deciding an appeal by the individual or body designated to determine appeals shall commence upon receipt of a written appeal identifying:

- (1) the date and location of requests for records;
- (2) a description, to the extent possible, of the records that were denied; and
- (3) the name and return address of the person denied access.

(c) The Agency Freedom of Information Act Appeals Officer is:

Robert M. Petrovich  
Onondaga County Industrial Development Agency Executive Director

Business Address:

Onondaga County Industrial Development Agency  
335 Montgomery Street, Floor 2M  
Syracuse, New York 13202  
Ph. (315) 435-3770

(d) A failure to determine an appeal within ten (10) business days of its receipt by granting access to the records sought or fully explaining the reasons for further denial in writing shall constitute a denial of the appeal.

(e) The person or body designated to determine appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on Open Government  
New York State Department of State  
41 State Street  
Albany, NY 12231

(f) The person or body designated to determine appeals shall inform the appellant and the Committee on Open Government of its determination in writing within ten (10) business days of receipt of an appeal. The determination shall be

transmitted to the Committee on Open Government in the same manner as set forth subdivision (f) of this section.

#### **SECTION 10. FEES**

- (a) There shall be no fee charged for:
  - (1) inspection of records;
  - (2) search for records; or
  - (3) any certification pursuant to this part.
- (b) Copies may be provided without charging a fee.
- (c) Fees may be charged as follows:
  - (1) Twenty-five cents (\$0.25) per page for photocopies not exceeding 9x14 inches;
  - (2) The actual reproduction cost of any other record, unless a separate fee is prescribed by statute;
  - (3) Employee time if more than two hours is required. Such fee shall be determined using the hourly salary of the lowest-paid employee who can do the work multiplied by the number of hours. Search time may not be charged for;
  - (4) Postage;
  - (5) The actual cost of the storage device or media (tape, CD, etc.);
  - (6) The actual cost of outside expertise or services such as programming or other services (e.g. copying) to prepare the records, *only* when the Agency's own programmers and staff are inadequate or otherwise unable to do the programming or preparation of the records;
- (d) Prior to preparing the responsive records, the Agency must provide the requesting party with a detailed estimate of the anticipated costs, and if applicable, the reason that outside expertise or services will be required to respond to the FOIL request. If a requesting party is going to be charged because more than two (2) hours of the Agency's employees' time is needed, then an explanation for such fact also shall be provided.

#### **SECTION 11. PUBLIC NOTICE**

A notice containing the title or name and business address of the Records Access Officer(s) and appeals person or body and the location where records can be seen or copies shall be posted in a conspicuous location wherever records are kept and/or published in a local newspaper of general circulation.

**SECTION 12. REAL PROPERTY OWNERSHIP RECORDS.**

Disclosure of information contained in records dealing with the ownership of real property is not considered an invasion of personal privacy.

**SECTION 13. CONTRACT IMPLICATIONS.**

The Agency is prohibited from renewing or entering into a new contract for the creation of maintenance of records if the contract impairs the right of the public to inspect or copy its records.

**SECTION 14. SEVERABILITY**

If any provision of these regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of these regulations or the application thereof to other persons and circumstances.

**SECTION 15. EFFECTIVE DATE**

The foregoing rules and regulations shall take effect immediately

**Designated Records Access Officer(s):**

Robert Petrovich, Executive Director and Secretary  
Onondaga County Industrial Development Agency  
Business Address:

Onondaga County Office of Economic Development  
335 Montgomery Street, Floor 2M  
Syracuse NY 13202  
Ph. (315) 435-3770

Patrick Hogan , Chair  
Onondaga County Industrial Development Agency  
Business Address:

Onondaga County Industrial Development Agency  
335 Montgomery Street, Floor 2M  
Syracuse, New York 13202  
Ph. (315) 435-3770

**OCIDA Legal Counsel:**

Barclay Damon  
125 East Jefferson Street

Syracuse, New York 13202  
Attn.: Jeffrey Davis, Esq  
PH. (315) 425-2823



## POLICY ON INDUCEMENTS TO PROSPECTS

The Board of the Onondaga County Industrial Development Agency (“OCIDA” or the “Agency”) is in a position to provide incentives to eligible companies considering locating in the County of Onondaga. OCIDA is one of the few flexible sources of local funds for economic development purposes. Therefore, since July 1, 1995, the Board has preserved a minimum of \$200,000 in fund balance each year, for specific job retention and attraction projects. The purpose of these guidelines is to preserve the flexibility of the fund while simultaneously insuring the use of the funds judiciously and in a manner that provides the greatest economic return to Onondaga County.

The fund may be used in negotiations with companies considering locating in Onondaga County under the following circumstances:

- a) OCIDA’s professional staff have met directly with company officials and “qualified” the prospect as to (i) financial need, (ii) jobs projected to be created, and (iii) competition with other communities.
- b) The project requires the fund to fill gaps in project requirements that cannot be met with existing federal, state and local economic development financing programs.
- c) Use of the fund will include means of recapture. Means of recapture may include, but shall not be limited to, supplemental fees to be paid over time and may include credits against such fees for meeting employment goals.
- d) Use of the fund requires a project to become a project of the Agency and as such to be subject to the Agency’s application and inducement process.
- e) The fund shall be used in accordance with the legislative authority given to industrial development agencies in New York State.



## LEGAL FEE POLICIES

### 1. **Standard Legal Cost Allocation**

Ordinary pre-inducement legal costs shall be paid by the Agency. Post-inducement costs of Agency Counsel will be the responsibility of the applicant and billed directly to the applicant by Agency Counsel with copies of the bills sent to the Secretary of the Agency.

The legal fees of the agency for the first \$20 million is .0025 multiplied by the project cost. The fee for anything above the \$20 million is .00125 multiplied by the project cost.

### 2. **Agency as Lead Agency for SEQRA Purposes**

When the Agency is asked and agrees to act as lead agency for purposes of SEQRA compliance, the legal costs associated with the fulfillment of the Agency's obligation shall be the responsibility of the applicant from the time the Agency agrees to be lead agency, whether or not an inducement has been passed.

### 3. **Special Agency Projects**

For projects where Agency participation consists of a direct contribution of financial support and no other participation, the Agency legal fees will either be paid by the applicant or deducted from the amount of financial support offered. In these cases, the legal fees include those incurred by the Agency both prior to and following inducement or project approval.



## LOCAL ACCESS POLICY

In absence of a waiver permitting otherwise, every project seeking the assistance of the Onondaga County Industrial Development Agency (Agency) must use local general contractors, sub-contractors and labor for one-hundred percent (100%) of the construction of new, expanded, or renovated facilities. The project's construction or project manager need not be a local company.

All projects of the Agency will be subject to monitoring by the Agency. Noncompliance may result in the revoking and/or recapture of all benefits extended to the project by the Agency.

### Definitions

Local Labor is defined as laborers permanently residing in the State of New York counties of Cayuga, Cortland, Herkimer, Jefferson, Madison, Oneida, Onondaga, Oswego, Tompkins and Wayne.

Local (Sub) Contractor is defined as a contractor operating a permanent office in the State of New York counties of Cayuga, Cortland, Herkimer, Jefferson, Madison, Oneida, Onondaga, Oswego, Tompkins and Wayne.

### Waivers

The Agency may determine on a case-by-case basis to waive the local access policy for a project or for a portion of a project where consideration of warranty issues, necessity of specialized skills, significant cost differentials between local and non-local services or other compelling circumstances exist. Should a company require a waiver of the local access policy, the Board would ask that the company make good faith efforts to use New York based companies prior to reaching outside the state for services.

### Waiver Process

The project Applicant will submit in writing a request for a waiver to the Executive Director of the Agency. Said request will clearly and comprehensively explain and reliably verify the need for the waiver. The company shall then provide proof to the Executive Director of diligent efforts to secure labor within the local labor area. The company must provide proof directly from local companies that the labor is not available in the 10 County area. The Executive Director will submit the verified waiver request to the Board Chair and the agency attorney for review and shall approve or disapprove waivers.

### Noncompliance

If a project is found to be noncompliant, the Executive Director will issue a written warning. If within thirty (30) days of issuance of the warning the project remains noncompliant, the Executive Director will submit to the Board a resolution to revoke and/or recapture the project benefits.



**TAX-EXEMPT, TAXABLE, AND  
STRAIGHT LEASE POLICIES**  
Amended 1.13.2012

**1. Classes of Projects**

- a. The Agency will consider the following projects absent of a specific reason to not undertake the project: manufacturing, manufacturing support, assembly, warehouse, distribution, agricultural, food processing, back-office operations, research and development, transportation
- b. The Agency will consider service industry projects without predisposition to either approve or disapprove. Service industry projects generally include banking, finance, engineering, insurance, professional services, call centers, medical, media & communications, civic facilities, and public relations and advertising. The Agency will consider the threshold information noted in Section 2 in its analysis of the project.
- c. The Agency may consider other projects on a case-by-case basis. Such projects generally include office, mixed-use, recreation, retail, apartment housing and proprietary education. The Agency will evaluate the project based on the threshold information provided in Section 2 of this policy.

**2. Threshold Information**

- a. The project must consist of new construction, expansion or substantial renovation of an existing facility or the acquisition of furniture or equipment, and
- b. The project must create new employment opportunities or retain existing jobs that otherwise may be lost, and
- c. The project must serve a customer base primarily located outside of Onondaga County.
- d. The project must meet at least a 10 to 1 cost benefit ratio such that for every dollar of tax exemption that the agency provides, the company shall provide 10 dollars to the local economy. These benefits shall include, but are not limited to, land/building acquisition costs, jobs, salaries, construction costs, equipment and professional services.
- e. A project not fulfilling any of the above, may be considered at the sole discretion of the Agency for compelling reasons.

**3. Terms of Agency Ownership**

- a. Bond Issue - The Agency will remain in title for the term of the bonds.

- b. Straight Lease Transactions - The Agency will remain in title for the period of the construction or the issuance of the Certificate of Occupancy whichever is shorter. The Agency will remain in title for the period of the Payment in Lieu of Tax Agreement (PILOT) where the Agency and the applicant and have entered into a PILOT agreement.



## TERM OF PROJECT APPROVALS POLICY

1. **Agency Approval Time Limitations**
  - a. The Onondaga County Industrial Development Agency's ("Agency") application review, public hearing, and inducement process are to be completed within **one (1) year** of the date of the submission of the application unless extended by the Agency.
  - b. The transaction, either the bond closing or straight lease transaction, is to be completed within **two (2) years** of the inducement unless extended by the Agency.
  - c. Agency approval actions will **expire one year from the date of approval** unless the Agency affirmatively votes to extend *each* approval action of a project. The Agency resolutions subject to extension include:
    - i. The project review
    - ii. The public hearing approval
    - iii. The SEQRA lead agency designation
    - iv. The use of the Agency's power of eminent domain
    - v. The inducement resolution
    - vi. The closing resolution
2. **Exceptions to the Approval Time Limitations:**
  - a. Projects that are proposed by and initiated by the Agency.
  - b. Projects, including those that involve the possible use of eminent domain, undertaken on behalf of the county, a town, or a village.



## OPEN MEETING LAW REQUIREMENTS

See also Executive Session Summary

The Open Meetings Law requires public bodies to perform public business in an open and public manner. The Open Meetings Law allows citizens to be aware of and to observe the performance of public officials and to attend and listen to the deliberations and decisions that go into making public policy.

The Onondaga County Industrial Development Agency (the “Agency”) is a public body under the Open Meetings Law and is required to comply with its provisions.

The Open Meetings Law requires:

1. Meetings to be open to the general public, except for executive sessions.
2. Reasonable efforts be made to ensure that meetings are held at facilities allowing barrier free access to the physically handicapped.
3. Opportunities for the public to attend, listen and observe at any site at which a member is participating via videoconferencing.
4. Provide notice of the meetings:
  - a. For meetings scheduled at least one (1) week in advance:
    - i. Notice of time and location of meeting;
    - ii. Provide notice to news media and conspicuously post in designated public locations **at least 72 hours prior to meeting.**
  - b. All other meetings:
    - i. Notice of time and location of meeting;
    - ii. Provide notice to the news media, to the extent it is practicable, and post notice conspicuously in designated public locations **a reasonable time prior to the meeting.**
  - c. If using videoconferencing, state in the notice and provide all locations and indicate that public is welcome to attend at any location
5. Minutes must be taken:

- a. **Meeting Minutes** must include: record or summary of all motions, proposals, resolutions and other matters formally voted upon and the vote on such matters.
  - b. **Executive Session Minutes** must be taken of any action that is taken by a formal vote, and must consist of a record or summary of a final determination and the vote thereon. They do not need to include any matters not required to be made available to the public pursuant to FOIL.
  - c. Meeting Minutes be made available to the public in accordance with FOIL within 2 weeks of the meeting date.
  - d. Executive Session Minutes must be made available in accordance with FOIL within 1 week of session date.
6. The following are **exempt** from the Open Meeting Law Requirements:
- a. Judicial or quasi-judicial proceedings (excluding zoning board of appeals and public service commission proceedings);
  - b. Deliberations of political committees, conferences and caucuses; and
  - c. Matters made confidential by state or federal law.
7. Matters protected by the attorney-client privilege.



## **PUBLIC HEARING REQUIREMENTS**

Pursuant to General Municipal Law § 859-a, the Onondaga County Industrial Development Agency (the “Agency”) must hold a public hearing as a prerequisite to the providing financial assistance of more than \$100,000.00 to a project.

The following requirements apply to the public hearing:

1. It must be held in the city, town or village in which the project proposes to locate.
2. At least ten (10) days prior published notice must be given.
3. Notice to the chief executive officer of each affected tax jurisdiction in which the project is located must be provided.
4. The notice must:
  - a. state the time and place of the public hearing;
  - b. provide a general, functional description of the project;
  - c. describe the prospective location of the project;
  - d. identify the initial owner, operator or manager of the project;
  - e. describe generally the financial assistance contemplated by the Agency with respect to the project.



## SEQRA SUMMARY

New York's **State Environmental Quality Review Act** (SEQR) requires all state and local government agencies to consider environmental impacts equally with social and economic factors during discretionary decision-making.

Agencies must assess the environmental significance of all actions they have discretion to approve, fund or directly undertake. SEQR requires the agencies to balance the environmental impacts with social and economic factors when deciding to approve or undertake an "**Action**".

### **SEQR DEFINITION OF AN ACTION:**

Actions under SEQR are those actions of the state or of a local government consisting of:

- 1. The approval or direct development of physical projects.** Some examples are:
  - shopping centers
  - factories and office buildings
  - dredging
  - residential developments
  - roads and landfills
  
- 2. Planning activities that require a government agency decision.** Some examples:
  - park development plans
  - formation of districts
  - land use plans
  
- 3. Adoption of agency rules, regulations, procedures and policies.** Some examples:
  - local zoning and planning
  - wetlands protection
  - public health regulations
  - handling of toxic wastes

## **SEQR REVIEW PROCESS:**

**STEP ONE: CLASSIFY THE ACTION:** Determine whether the action is subject to SEQR. If the proposed action does not require a discretionary decision, it is not subject to SEQR. Determine whether it is a Type II Action, a Type I Action or an Unlisted Action.

**Type I Actions:** Type I actions meet or exceed thresholds listed in the statewide or agency SEQR regulations. These are likely to require preparation of an EIS. Examples of Type I Actions are:

- nonresidential projects physically altering 10 or more acres of land
- nonresidential projects for a facility with more than 100,000 square feet of gross floor area in a city, town or village having a population of 150,000 persons or less,
- projects requiring zoning changes affecting 25 or more acres

Note: Type I actions do not always require an EIS.

**Type II Actions:** Type II actions those actions, which never require further SEQR review. Type II actions listed in the statewide and agency SEQR regulations are determined not to have a significant adverse impact on the environment. Some examples:

- rebuilding or replacement of facilities, in-kind, on the same site
- minor structures, such as garages, barns or home swimming pools, routine permit and license renewals with no substantial change in permitted activities
- construct or expand either primary or accessory nonresidential structures in an appropriate zone with less than 4,000 square feet of gross floor space construct or expand a single, two or three family residence on approved lot
- routine activities of educational institutions, including expansions of existing facilities by less than 10,000 square feet
- purchase or sale of furnishings, equipment or supplies other than land and hazardous material (herbicides, radioactive material, pesticides etc)
- maintenance or repair involving no substantial changes in an existing structure or facility



**Unlisted Actions:** Unlisted actions do not meet the Type I thresholds but some may still require an EIS. Some examples:

- nonresidential projects physically altering less than 10 acres of land
- nonresidential projects for a facility with less than 100,000 square feet of gross floor area

Unlisted Actions **do not always require** preparation of a full EAF.

**If an action is determined to be Type II, then no further environmental review is required and the SEQR process ends.**

**STEP TWO: ENVIRONMENTAL ASSESSMENT FORMS:** A Full EAF is required for Type I actions. Unlisted Actions do not necessarily require the preparation of a Full EAF; however, a short EAF is required.

**STEP THREE: COORDINATED/UNCOORDINATED REVIEW:** All Type I actions are required to have coordinated review. The involved agency initially receiving an application for approval circulates the completed Part I of the full EAF and any other information supplied by the applicant to the other involved agencies. If only one agency is approving, funding or directly undertaking an action, that agency is automatically the lead agency. If there are two or more involved agencies, the involved agencies must agree on a lead agency within 30 calendar days. Usually, the agency seeking to be lead agency will notify the other involved agencies of its desire to serve as lead agency. If no other involved agency objects within 30 days, then such agency is the lead agency. If the other involved agencies agree in writing to such agency serving as lead agency, then there is no need to wait for the expiration of the 30-day period.

Unlisted Actions do not require coordinated review. Three options are available for review of an Unlisted Action: (1) Optional Coordinated Review; (2) Uncoordinated Review; (3) Conditional Negative Declaration (requires a Full EAF and coordinated review).

In an uncoordinated review, each involved agency acts as a lead agency and may proceed as if it were the only involved agency. At any time prior to its final decision an agency may have its negative declaration superseded by a positive declaration issued by any other involved agency. If any of the involved agencies issues a positive declaration, that agency must then coordinate review with all the other involved agencies.

**STEP FOUR: SIGNIFICANCE DETERMINATION:** The lead agency must either:

- (1) Determine that the action may be environmentally significant (positive declaration) and require that an EIS be prepared; or

(2) Determine that the action will not be environmentally significant (negative declaration); if so, the SEQR process ends;

For either (1) or (2) a written document must be prepared for which states the reasons that support the decision.

If a positive declaration is issued and an EIS is required to be prepared, the optional step of scoping may be done. Scoping is the process by which the issues to be addressed in the draft EIS are identified.

Once a draft EIS has been accepted, a minimum 30-day public comment period is required for review of the accepted EIS draft. A public hearing may be held. Based on the final EIS each involved agency must make SEQR findings to minimize the identified environmental impacts.

### **SEQR Responsibilities: Involved Agencies that are not the Lead Agency**

When coordinated review has occurred for Type I or Unlisted actions, the determination of significance by the lead agency is binding on all involved agencies. The lead agency establishes the record upon which the other involved agencies base their findings.

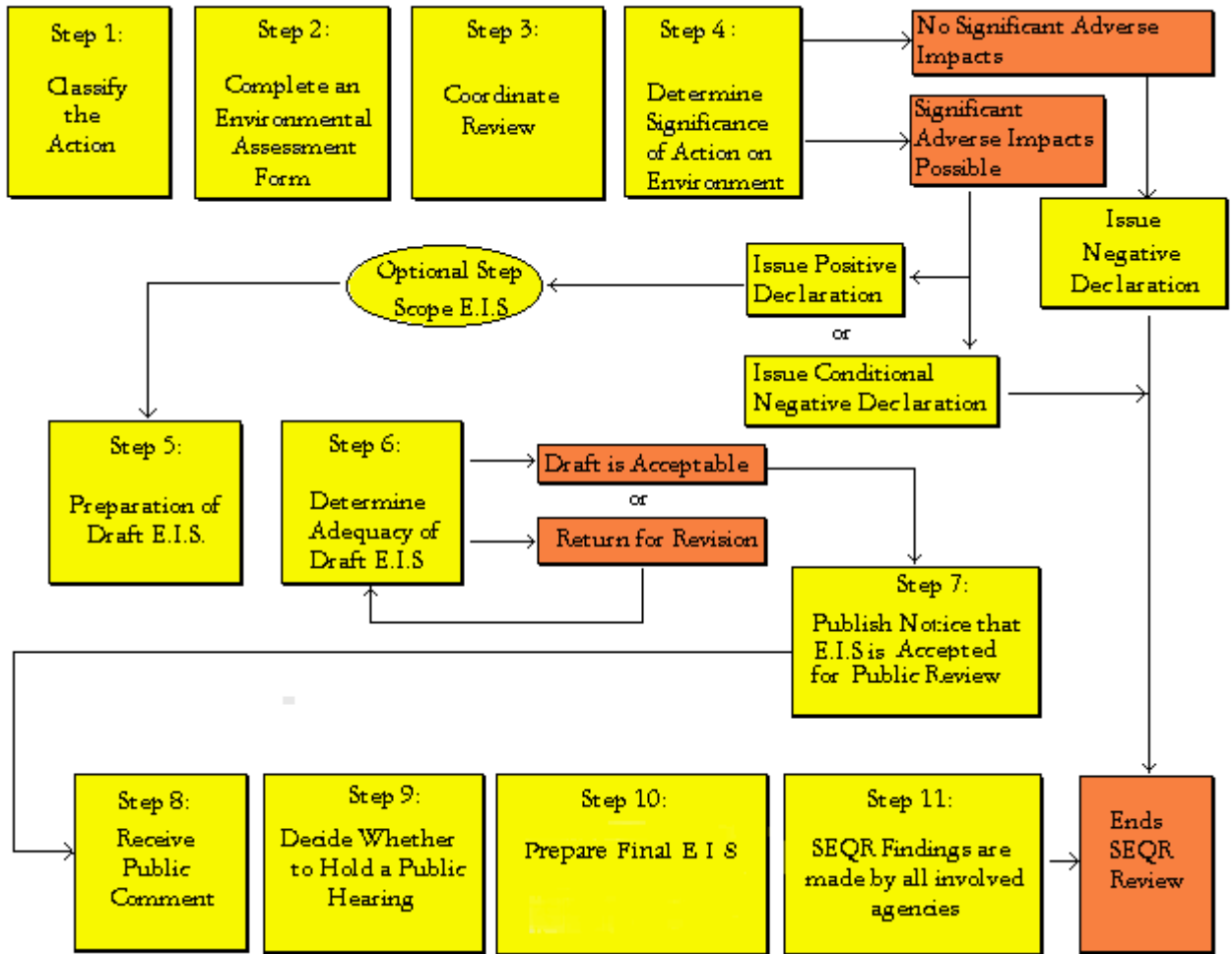
When there is a coordinated review and the lead agency issues a negative declaration, other involved agencies make their own determination and may adopt the reasoning of the lead agency. However, they are bound by the negative declaration issued.

If a positive declaration is issued by the lead agency, the involved agency should participate in any public hearings, as appropriate, provide formal agency reviews during the public review period, and assist the lead agency in responding to substantive comments during the public review period. Each involved agency must prepare its own written SEQR findings statement, after a final EIS has been filed and before the agency makes a final decision.

### **STEP FIVE: FILING AND PUBLISHING**

For a Type I action the negative declaration must be filed at the Agency as required by 6 NYCRR Section 617.12(b)(2) and the Agency must publish it in the Environmental Notice Bulletin as required by 6 NYCRR Section 617.12(c). For an Unlisted Action, the reviewing agency must maintain a file readily accessible to the public containing the negative declaration.

## SEQR REVIEW FLOW CHART



**Agency Project Fees - Adopted 1/2022**

Minimum Fee to be applied to all project receiving OCIDA benefits is 1% of the Total Project Cost (TPC)

ACTIVITY	FEES	COMMENTS
Non- refundable Application Fee (All projects except Solar Projects)	\$1,000	Due at time of application
Non-refundable Application Fee (Solar Projects Only)	\$10,000	
Legal Deposit (All projects except Solar Projects)	\$2,500	Due at time of application
Legal Deposit (Solar Projects Only)	\$5,000	
Minimum Fee of 1% of TPC		
Sales and Use Tax Exemption	.01 X TPC	Due at closing
Mortgage Recording Tax		
<b>PILOT is an additional fee</b>	.0025 X TPC (total .0125)	
Bonds Bond refinancing and refunding	.0025 of TPC	Due at closing
Agency Legal Fees		
Fee for first \$20 million	.0025 X of the project cost or bond amount	Due at closing
Fee for expenses above \$20 million	.00125 X of project cost or bond amount	
Amendment or Modification of IDA documents, including but not limited to name or organization change, refinancing, etc. Consent to the amendment or modification of IDA documents prior to closing on the project shall be given at OCIDA's sole and absolute discretion.	Up to but not to exceed 5% of Agency Fee as noted on the Cost Benefit Analysis at time of project approval. Attorney fees determined by OCIDA Legal Representative.	Due at time of Request

OCIDA reserves the right to modify this schedule at any time and assess fees and charges in connection with other transactions such as grants of easement or lease or sale of OCIDA-owned property.

**C. Payment terms:**

Application Fee: Payable at time of application

Agency Fee for Bond Projects: Payable at Closing

Agency Fee for Sales Tax Only Projects: Payable at Inducement

Agency Fee for All Other Projects: Payable at Project Inducement or by arrangement with the Agency at time of application

**D. Legal Counsel:** See contact on OCIDA Application. All the legal fees should be paid by the applicant per the application. Legal Fees may vary based on the characteristics of the project.

**APPENDIX A**

**ARTICLE 7 OF THE PUBLIC OFFICERS LAW  
OPEN MEETINGS LAW**

**§ 100. Legislative declaration**

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it.

**§ 101. Short title**

This article shall be known and may be cited as “Open Meetings Law”.

**§ 102. Definitions**

As used in this article:

1. “Meeting” means the official convening of a public body for the purpose of conducting public business, including the use of videoconferencing for attendance and participation by the members of the public body.
2. “Public body” means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body.
3. “Executive session” means that portion of a meeting not open to the general public.

**§ 103. Open meetings and executive sessions**

(a) Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section ninety-five [FN1] of this article.

(b) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law.

(c) A public body that uses videoconferencing to conduct its meetings shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates.

#### **§ 104. Public notice**

1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.

2. Public notice of the time and place of every other meeting shall be given, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.

3. The public notice provided for by this section shall not be construed to require publication as a legal notice.

4. If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.

#### **§ 105. Conduct of executive sessions**

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:

a. matters which will imperil the public safety if disclosed;

b. any matter which may disclose the identity of a law enforcement agent or informer;

c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;

d. discussions regarding proposed, pending or current litigation;

e. collective negotiations pursuant to article fourteen of the civil service law;

f. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension,

dismissal or removal of a particular person or corporation;

g. the preparation, grading or administration of examinations; and

h. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

2. Attendance at an executive session shall be permitted to any member of the public body and any other persons authorized by the public body.

### **§ 107. Enforcement**

1. Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of a proceeding pursuant to article seventy-eight of the civil practice law and rules, and/or an action for declaratory judgment and injunctive relief. In any such action or proceeding, the court shall have the power, in its discretion, upon good cause shown, to declare any action or part thereof taken in violation of this article void in whole or in part.

An unintentional failure to fully comply with the notice provisions required by this article shall not alone be grounds for invalidating any action taken at a meeting of a public body. The provisions of this article shall not affect the validity of the authorization, acquisition, execution or disposition of a bond issue or notes.

2. In any proceeding brought pursuant to this section, costs and reasonable attorney fees may be awarded by the court, in its discretion, to the successful party. If a court determines that a vote was taken in material violation of this article, or that substantial deliberations relating thereto occurred in private prior to such vote, the court shall award costs and reasonable attorney's fees to the successful petitioner, unless there was a reasonable basis for a public body to believe that a closed session could properly have been held.

3. The statute of limitations in an article seventy-eight proceeding with respect to an action taken at executive session shall commence to run from the date the minutes of such executive session have been made available to the public.

### **§ 108. Exemptions**

Nothing contained in this article shall be construed as extending the provisions hereof to:

1. judicial or quasi-judicial proceedings, except proceedings of the public service commission and zoning boards of appeals;

2. a. deliberations of political committees, conferences and caucuses.



b. for purposes of this section, the deliberations of political committees, conferences and caucuses means a private meeting of members of the senate or assembly of the state of New York, or of the legislative body of a county, city, town or village, who are members or adherents of the same political party, without regard to (i) the subject matter under discussion, including discussions of public business, (ii) the majority or minority status of such political committees, conferences and caucuses or (iii) whether such political committees, conferences and caucuses invite staff or guests to participate in their deliberations; and

3. any matter made confidential by federal or state law.

### **§ 109. Committee on open government**

The committee on open government, created by paragraph (a) of subdivision one of section eighty-nine of this chapter, shall issue advisory opinions from time to time as, in its discretion, may be required to inform public bodies and persons of the interpretations of the provisions of the open meetings law.

### **§ 110. Construction with other laws**

1. Any provision of a charter, administrative code, local law, ordinance, or rule or regulation affecting a public body which is more restrictive with respect to public access than this article shall be deemed superseded hereby to the extent that such provision is more restrictive than this article.

2. Any provision of general, special or local law or charter, administrative code, ordinance, or rule or regulation less restrictive with respect to public access than this article shall not be deemed superseded hereby.

3. Notwithstanding any provision of this article to the contrary, a public body may adopt provisions less restrictive with respect to public access than this article.

### **§ 111. Severability**

If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.

**APPENDIX B**  
**ARTICLE 9 OF THE PUBLIC AUTHORITIES LAW**  
**TITLE 1: REPORTS BY PUBLIC AUTHORITIES**

**§ 2800. Annual reports by authorities**

1. State authorities. (a) For the purpose of furnishing the state with systematic information regarding the status and the activities of public authorities, every state authority continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the governor, the chairman and ranking minority member of the senate finance committee, the chairman and ranking minority member of the assembly ways and means committee and the state comptroller, within ninety days after the end of its fiscal year, a complete and detailed report or reports setting forth: (1) its operations and accomplishments; (2) its receipts and disbursements, or revenues and expenses, during such fiscal year in accordance with the categories or classifications established by such authority for its own operating and capital outlay purposes; (3) its assets and liabilities at the end of its fiscal year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds; (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance that includes the date of issuance, term, amount, interest rate and means of repayment. Additionally, the debt schedule shall also include all refinancings, calls, refundings, defeasements and interest rate exchange or other such agreements, and for any debt issued during the reporting year, the schedule shall also include a detailed list of costs of issuance for such debt; (5) a compensation schedule that shall include, by position, title and name of the person holding such position or title, the salary, compensation, allowance and/or benefits provided to any officer, director or employee in a decision making or managerial position of such authority whose salary is in excess of one hundred thousand dollars; (6) the projects undertaken by such authority during the past year; (7) a listing of (i) all real property of such authority having an estimated fair market value in excess of fifteen thousand dollars that the authority intends to dispose of; (ii) all such property held by the authority at the end of the period covered by the report; and (iii) all such property disposed of during such period. The report shall contain an estimate of fair market value for all such property held by the authority at the end of the period and the price received by the authority and the name of the purchaser for all such property sold by the authority during such period; (8) such authority's code of ethics; and (9) an assessment of the effectiveness of its internal control structure and procedures.

(b) To the extent practicable, each state authority shall make accessible to the public via its official internet web site documentation pertaining to its mission, current activities, most recent

annual financial reports, current year budget and its most recent independent audit report unless such information is covered by subdivision two of section eighty-seven of the public officers' law.

2. Local authorities. (a) Every local authority, continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the chief executive officer, the chief fiscal officer, the chairperson of the legislative body of the local government or local governments and the entity established pursuant to section twenty-seven of the chapter of the laws of two thousand five which added this subdivision, within ninety days after the end of its fiscal year, a complete and detailed report or reports setting forth: (1) its operations and accomplishments; (2) its receipts and disbursements, or revenues and expenses, during such fiscal year in accordance with the categories or classifications established by such authority for its own operating and capital outlay purposes; (3) its assets and liabilities at the end of its fiscal year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds; (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance that includes the date of issuance, term, amount, interest rate and means of repayment. Additionally, the debt schedule shall also include all refinancings, calls, refundings, defeasements and interest rate exchange or other such agreements, and for any debt issued during the reporting year, the schedule shall also include a detailed list of costs of issuance for such debt; (5) a compensation schedule that shall include, by position, title and name of the person holding such position or title, the salary, compensation, allowance and/or benefits provided to any officer, director or employee in a decision making or managerial position of such authority whose salary is in excess of one hundred thousand dollars; (6) the projects undertaken by such authority during the past year; (7) a listing of (i) all real property of such authority having an estimated fair market value in excess of fifteen thousand dollars that the authority intends to dispose of; (ii) all such property held by the authority at the end of the period covered by the report; and (iii) all such property disposed of during such period. The report shall contain an estimate of fair market value for all such property held by the authority at the end of the period and the price received by the authority and the name of the purchaser for all such property sold by the authority during such period; (8) such authority's code of ethics; and (9) an assessment of the effectiveness of its internal control structure and procedures.

(b) To the extent practicable, each local authority shall make accessible to the public via its official internet web site documentation pertaining to its mission, current activities, most recent annual financial reports, current year budget and its most recent independent audit report unless such information is covered by subdivision two of section eighty-seven of the public officers' law.

3. Every financial report submitted under this section shall be approved by the board and shall be certified in writing by the chief executive officer and the chief financial officer of such authority that based on the officer's knowledge (a) the information provided therein is accurate, correct and does not contain any untrue statement of material fact; (b) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of

the circumstances under which such statements are made; and (c) fairly presents in all material respects the financial condition and results of operations of the authority as of, and for, the periods presented in the financial statements.

### **§ 2801. Budget reports by authorities**

1. State authorities. Every state authority or commission heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the governor, chairman and ranking minority member of the senate finance committee, and chairman and ranking minority member of the assembly ways and means committee, for their information, annually not less than ninety days before the commencement of its fiscal year, in the form submitted to its members or trustees, budget information on operations and capital construction setting forth the estimated receipts and expenditures for the next fiscal year and the current fiscal year, and the actual receipts and expenditures for the last completed fiscal year.

2. Local authorities. For the local authority fiscal year ending on or after December thirty-first, two thousand seven and annually thereafter, every local authority heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the chief executive officer, the chief fiscal officer, the chairperson of the legislative body of the local government or governments and the entity established pursuant to section twenty-seven of the chapter of the laws of two thousand five which added this subdivision, for their information, annually not less than sixty days before the commencement of its fiscal year, in the form submitted to its members or trustees, budget information on operations and capital construction setting forth the estimated receipts and expenditures for the next fiscal year and the current fiscal year, and the actual receipts and expenditures for the last completed fiscal year.

### **§ 2802. Independent audits and audit reports of authorities**

1. State authorities. Every state authority or commission heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the governor, chairman and ranking minority member of the senate finance committee, chairman and ranking minority member of the assembly ways and means committee and the state comptroller, within thirty days after receipt thereof by such authority, a copy of the annual independent audit report, performed by a certified public accounting firm in accordance with generally accepted government auditing standards, and management letter and any other external examination of the books and accounts of such authority other than copies of the reports of any examinations made by the state comptroller.

2. Local authorities. For the local authority fiscal year ending on or after December thirty-first, two thousand seven and annually thereafter, every local authority heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the chief executive officer, the chief fiscal officer, the chairperson of the legislative body of the local government or local governments and to the entity established

pursuant to section twenty-seven of the chapter of the laws of two thousand five which added this subdivision, within thirty days after receipt thereof by such authority, a copy of the annual independent audit report, performed by a certified public accounting firm in accordance with generally accepted government auditing standards, and management letter and any other external examination of the books and accounts of such authority other than copies of the reports of examinations made by the state comptroller.

3. Each certified independent public accounting firm that performs for any state or local authority any audit required by this chapter shall timely report to the audit committee of such authority: (a) all critical accounting policies and practices to be used; (b) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of such authority, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm; and (c) other material written communications between the certified independent public accounting firm and the management of such authority, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable.

4. Notwithstanding any other provision of law to the contrary, the certified independent public accounting firm providing such authority's annual independent audit will be prohibited in providing audit services to the respective authority if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the five previous fiscal years of such authority.

5. The certified independent public accounting firm performing such authority's audit shall be prohibited from performing any non-audit services to such authority contemporaneously with the audit, unless receiving previous written approval by the audit committee including: (a) bookkeeping or other services related to the accounting records or financial statements of such authority; (b) financial information systems design and implementation; (c) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (d) actuarial services; (e) internal audit outsourcing services; (f) management functions or human services; (g) broker or dealer, investment advisor, or investment banking services; and (h) legal services and expert services unrelated to the audit.

6. It shall be prohibited for any certified independent public accounting firm to perform for such authority any audit service if the chief executive officer, comptroller, chief financial officer, chief accounting officer, or any other person serving in an equivalent position for such authority, was employed by that certified independent public accounting firm and participated in any capacity in the audit of such authority during the one year period preceding the date of the initiation of the audit.

7. Notwithstanding any provision of law to the contrary, a public authority may exempt information from disclosure or report, if the counsel of such authority deems that such

information is covered by subdivision two of section eighty-seven of the public officers' law.

**§ 2803. Examination of the books and accounts of public authorities by the state comptroller**

Notwithstanding any other provision of this chapter, the state comptroller shall, from time to time but not less than once in every five years, examine the books and accounts of every authority or commission heretofore or hereafter continued or created by this chapter, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing. In lieu of such an examination, the state comptroller is hereby authorized to accept from every such authority or commission an external examination of its books and accounts made at the request of such authority or commission.

**§ 2804. Financial disclosure by public authorities or commissions prior to toll or fare increase**

(1) Notwithstanding any inconsistent provision of this chapter or of any other general, special or local law, every authority or commission heretofore or hereafter continued or created by this chapter, except those excluded from the operation of this section by subdivision four, having jurisdiction over highway, bridge or tunnel facilities shall submit to the governor, comptroller, chairman of the senate finance committee, chairman of the assembly ways and means committee and ranking minority member of each of such committees, not less than one hundred twenty days prior to the proposed date of any future increase in fees, tolls or other charges for the use of any such highway, bridge or tunnel facilities, or the imposition of tolls or fees at such a location which is toll or fee free, a detailed report setting forth: (a) the need for such increase or imposition; (b) its receipts and disbursements, or revenues and expenses, during the prior three fiscal years, or so much thereof as it may have been in existence, in accordance with the categories or classifications established by such authority or commission for its own operating and capital outlay purposes; (c) its assets and liabilities at the end of its last fiscal year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds; (d) a schedule of bonds and notes outstanding at the end of its fiscal year and their redemption dates, together with a statement of the amounts redeemed and incurred during such fiscal year; (e) information on future authority or commission operations, debt service and capital construction, together with estimated receipts and expenditures for the next five fiscal years without reference to such proposed increase or imposition; (f) projections and estimates as to the effect which the proposed increase or imposition will have on the future use of the facilities, and an estimate of the revenues which will accrue to the authority or commission as the result of the proposed increase or imposition.

(2) The comptroller shall review any proposed increase or imposition in fees, tolls or other charges, and the report required by subdivision one of this section and within sixty days make public a report of his findings, conclusions and recommendations. A copy of the comptroller's report shall be sent to the authority or commission, the governor, chairperson of the senate finance committee, chairperson of the assembly ways and means committee and ranking minority member of each of such committees.

(3) Every authority or commission shall hold a public hearing or hearings after receipt of the

report of the comptroller required by subdivision two of this section not less than fifteen days prior to the effective date of such increase or imposition. Where the increase sought is or constitutes a portion of a general statewide increase, three hearings across the state shall be held. Where the increase or imposition is applicable only to a specific facility or segment, one hearing in the affected area shall be held. Notice of each hearing shall be given to the governor, comptroller, and each member of the legislature at least ten days prior to each such hearing, and shall be published at least once in two newspapers of daily circulation in the area where each hearing is to be held at least ten days prior to each such hearing. All newspapers shall be selected by the authority or commission. Copies of the proposed increase or imposition, the reports required by subdivisions one and two of this section shall be available for public inspection during a period of fifteen days prior to each hearing at the office or offices of the authority or commission and at a public facility in each area where a hearing is to be held. Following such public hearing or hearings, the authority or commission shall reconsider the proposed increase or imposition and may rescind, change or modify the proposal, as it then deems necessary or advisable.

(4) This section shall not be applicable to any authority or commission whose existence and jurisdiction is fixed by compact, treaty, action or agreement with other states or nations.

#### **§ 2805. Reports and publications by authorities**

Every authority or commission heretofore or hereafter continued or created shall, in accordance with the provisions of section one hundred sixty-four-a of the executive law and the regulations promulgated pursuant thereto, provide for cost savings in the printing and distribution of its reports and other authority publications.

#### **§ 2806. Personnel reports by public authorities and public benefit corporations**

Every public authority and public benefit corporation shall submit to the comptroller, the director of the budget and the chairpersons of the legislative fiscal committees, for their information, annually, on or before the fifteenth day of January of each calendar year, personnel information setting forth personal service schedules by subsidiary, division and unit which indicate position, grade, salary and title for each employee and in summary form.

## **TITLE 2 BOARDS OF PUBLIC AUTHORITIES**

#### **§ 2824. Role and responsibilities of board members**

1. Board members of state and local authorities shall (a) execute direct oversight of the authority's chief executive and other senior management in the effective and ethical management of the authority; (b) understand, review and monitor the implementation of

fundamental financial and management controls and operational decisions of the authority; (c) establish policies regarding the payment of salary, compensation and reimbursements to, and establish rules for the time and attendance of, the chief executive and senior management; (d) adopt a code of ethics applicable to each officer, director and employee that, at a minimum, includes the standards established in section seventy-four of the public officers law; (e) establish written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the authority, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services; and (f) adopt a defense and indemnification policy and disclose such plan to any and all prospective board members;

2. Individuals appointed to the board of a public authority shall participate in state approved training regarding their legal, fiduciary, financial and ethical responsibilities as directors of an authority within one year of appointment to a board. Board members shall participate in such continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.

3. No board member, including the chairperson, shall serve as a public authority's chief executive officer, executive director, chief financial officer, comptroller, or hold any other equivalent position while also serving as a member of the board.

4. Board members of each state and local authority, or subsidiary thereof, shall establish an audit committee to be comprised of independent members. The committee shall recommend to the board the hiring of a certified independent accounting firm for such authority, establish the compensation to be paid to the accounting firm and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purposes.

5. Notwithstanding any provision of any general, special or local law, municipal charter or ordinance to the contrary, no board of a state or local authority shall, directly or indirectly, including through any subsidiary, extend or maintain credit, arrange for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any officer, board member or employee (or equivalent thereof) of the authority.

6. To the extent practicable, members of the audit committee should be familiar with corporate financial and accounting practices.

7. Board members of each state and local authority, or subsidiary thereof, shall establish a governance committee to be comprised of independent members. It shall be the responsibility of the members of the governance committee to keep the board informed of current best governance practices; to review corporate governance trends; to update the authority's corporate governance principles; and to advise appointing authorities on the skills and experiences required of potential board members.



## **§ 2825. Membership on authorities and commissions; independence; and financial disclosure**

Notwithstanding the provisions of any general, special or local law, municipal charter or ordinance: 1. No public officer or employee shall be ineligible for appointment as a trustee or member of the governing body of a state or local authority, as defined in section two of this chapter, and any public officer or employee may accept such appointment and serve as such trustee or member without forfeiture of any other public office or position of public employment by reason thereof.

2. Except for members who serve as members by virtue of holding a civil office of the state, the majority of the remaining members of the governing body of every state or local authority shall be independent members; provided, however, that this provision shall apply to appointments made on or after the effective date of the chapter of the laws of two thousand five which added this subdivision. The official or officials having the authority to appoint or remove such remaining members shall take such actions as may be necessary to satisfy this requirement. For the purposes of this section, an independent member is one who:

(a) is not, and in the past two years has not been, employed by the public authority or an affiliate in an executive capacity;

(b) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars for goods and services provided to the public authority or received any other form of financial assistance valued at more than fifteen thousand dollars from the public authority;

(c) is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate; and

(d) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or an affiliate.

3. Notwithstanding any other provision of any general, special or local law, municipal charter or ordinance to the contrary, board members, officers, and employees of a state authority shall file annual financial disclosure statements as required by section seventy-three-a of the public officers law. Board members, officers, and employees of a local public authority shall file annual financial disclosure statements with the county board of ethics for the county in which the local public authority has its primary office pursuant to article eighteen of the general municipal law.

## **§ 2826. Quorums and majorities**

Notwithstanding any other provision of this chapter and notwithstanding any provision of any general, special or local law, whenever the whole number of the board of any authority or commission heretofore or hereafter continued or created by this chapter is three or more persons, a majority of the whole number of the members of such board, at a meeting duly held

at a time fixed by law, or by any by-law duly adopted by such board, or at any duly adjourned meeting of such meeting or at any meeting duly held upon reasonable notice to all of the members of such board, shall constitute a quorum and not less than a majority of the whole number of such board may perform and exercise the powers authorized and provided in this chapter. For the purpose of this section, the words "whole number" shall be construed to mean the total number which such board would have were there no vacancies and were none of the members of such board disqualified from acting.

#### **§ 2827. Removal of authority members**

Except as otherwise provided in this chapter, every member of every authority or commission heretofore or hereafter continued or created by this chapter, except ex-officio members, that is, members whose membership results by virtue of their incumbency of a public office, shall be removable by the public officer or public body which is empowered by this chapter to appoint such authority or commission member, for inefficiency, neglect of duty or misconduct in office, provided, however, that such member shall be given a copy of the charges against him and an opportunity of being heard in person, or by counsel, in his defense upon not less than ten days' notice.

#### **§ 2828. Termination of public authorities**

Every authority or commission hereafter created by this chapter shall terminate at the end of five years from the date of its creation if at the end of such period it has outstanding no liabilities; provided, however, that any appropriation made to such authority or commission by the state of New York or by any political subdivision thereof shall not be deemed a liability for the purposes of this section.

### **TITLE 3: EMPLOYEES OF PUBLIC AUTHORITIES**

#### **§ 2850. Transfer of authority officers and employees**

Subject to the civil service law and rules, transfer may be allowed between positions in any authority or commission heretofore or hereafter continued or created by this chapter, which is subject to the jurisdiction of the state or a municipal civil service commission, and positions in the service of the state or a civil division thereof.

#### **§ 2850-a. Emergency service volunteers; paid leave**

Notwithstanding any other provisions of law to the contrary, public officers and employees of public authorities who are certified by the American Red Cross as disaster volunteers shall be granted leave from work with pay to participate in specialized disaster relief operations upon written request for such services by the American Red Cross and upon the approval of the chief executive of the public authority for which the public officer or employee serves. The public officer or employee shall be compensated at his or her regular rate of pay for those regular work

hours during which the public officer or employee is absent from work while participating in authorized specialized disaster relief operations. Such leave shall be provided without loss of seniority, compensation, sick leave, vacation leave or other overtime compensation to which the volunteer is otherwise entitled and shall not exceed twenty days in any calendar year.

**§ 2851. Age not to be bar to employment by public authorities**

No public authority shall hereafter prohibit, prevent, disqualify or discriminate against any person applying for employment by, such authority, who is physically and mentally qualified, or from competing, participating or registering for a position, or be penalized in a final rating for any position, by reason of his or her age. Any existing rule, regulation, penalty or requirement resolution preventing the hiring of persons because of age shall be void, except that nothing herein contained, shall prevent any public authority from adopting reasonable minimum or maximum age requirements for positions such as policeman, fireman, guard or other positions which require extraordinary physical effort except where age limits for such positions are already prescribed by law.

Notwithstanding any provisions to the contrary, no person who is physically or mentally qualified may be disqualified from, competing, participating or registering for a promotional examination or be penalized in a final rating or barred from promotion after having passed such promotion examination by reason of his or her age, by any public authority.

**TITLE 3-A: BUSINESS PRACTICES OF PUBLIC AUTHORITIES**

**§ 2855. Electronic method of payment; periodic charges**

Notwithstanding the provisions of any law to the contrary, if any authority shall offer any electronic method of payment for tolls, fares, fees, rentals, or other charges, including but not limited to a system called E-ZPass, such authority shall not impose any periodic administrative or other charge for the privilege of using such electronic method of payment for such charges. Nothing in this section shall be construed to prohibit any authority from making any charge for extra services requested by a holder of such electronic method of payment, any charge for lost or damaged equipment, or for defaults, such as charges for dishonored checks. The authority shall not enter any agreement with bondholders that would require the imposition of administrative or other periodic charges relating to electronic methods of payment prohibited by this section.

**TITLE 4: CONTRACTS OF PUBLIC AUTHORITIES**

**§ 2875-a. Definitions**

As used in this article, the following terms shall have the following meanings unless otherwise specified:

1. "Construction item" means any such item or material used in construction and which is

procured directly by the public authority or office or any such item or material commonly used in construction which is procured by a person, other than a municipality, under contract with the public authority or office.

2. "Office" means the office of general services.

3. "Practicable" means capable of being used without violating the following criteria: performance, availability at a reasonable price, availability within a reasonable period of time and maintenance of a satisfactory level of competition.

4. "Product" means any material, supply, equipment or construction item or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such product.

5. "Secondary materials" means any material recovered from or otherwise destined for the waste stream, including but not limited to, post-consumer material, industrial scrap material, and overstock or obsolete inventories from distributors, wholesalers and other companies as defined in rules and regulations promulgated by the commissioner of general services but such term does not include those materials and byproducts generated from, and commonly reused within an original manufacturing process.

6. "Specification" means any description of the physical or functional characteristics, or of the nature of a material, supply, equipment or construction item. It may include a description of any requirement for inspecting, testing or preparing a material, supply, equipment or construction item for delivery.

#### **§ 2875-b. Specifications**

Within twelve months of the effective date of this section all public authorities or commissions created or continued by this chapter shall review their present product specifications to determine whether such require that products be manufactured from virgin materials or exclude products manufactured from secondary materials and shall, on or before April first, nineteen hundred ninety revise and adopt their product specifications as may be necessary to ensure that:

a. Where such specifications exclude the use of products manufactured from secondary materials or require that products be manufactured from virgin materials only, such exclusions or requirements be eliminated; provided however, that specifications need not be revised if the public authority or commission demonstrates that for a particular end use a product containing secondary materials would not meet necessary performance standards.

b. Performance standards, specifications and a product's intended end use are related, and clearly identified when feasible.

- c. Specifications are not overly stringent for a particular end use or performance standard.
- d. Specifications incorporate or require the use of secondary materials to the maximum extent practicable without jeopardizing the performance or intended end use of the product; provided however, where the public authority or commission demonstrates that for a particular end use a product containing secondary materials would not meet necessary performance standards, such specifications need not incorporate or require the use of secondary materials.

### **§ 2875-b. Specifications**

Within twelve months of the effective date of this section all public authorities or commissions created or continued by this chapter shall review their present product specifications to determine whether such require that products be manufactured from virgin materials or exclude products manufactured from secondary materials and shall, on or before April first, nineteen hundred ninety revise and adopt their product specifications as may be necessary to ensure that:

- a. Where such specifications exclude the use of products manufactured from secondary materials or require that products be manufactured from virgin materials only, such exclusions or requirements be eliminated; provided however, that specifications need not be revised if the public authority or commission demonstrates that for a particular end use a product containing secondary materials would not meet necessary performance standards.
- b. Performance standards, specifications and a product's intended end use are related, and clearly identified when feasible.
- c. Specifications are not overly stringent for a particular end use or performance standard.
- d. Specifications incorporate or require the use of secondary materials to the maximum extent practicable without jeopardizing the performance or intended end use of the product; provided however, where the public authority or commission demonstrates that for a particular end use a product containing secondary materials would not meet necessary performance standards, such specifications need not incorporate or require the use of secondary materials.

### **§ 2876. Disqualification to contract with public authority**

Any person who, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, and

any firm, partnership or corporation, of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or any official of any public authority created by the state or any political subdivision, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of section twenty-eight hundred seventy-seven of this title.

It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state commission or other state agency, the organized crime task force in the department of law, the head of a city department or other city agency before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York, or the commissioner of general services as the case may be, and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the persons so refusing and any firm, partnership or corporation of which he is a member, partner, director or officer, is known to have a contract. However, when such refusal occurs before a body other than a grand jury, notice of refusal shall not be sent for a period of ten days after such refusal occurs. Prior to the expiration of this ten day period, any person, firm, partnership or corporation which has become liable to the cancellation or termination of a contract or disqualification to contract on account of such refusal may commence a special proceeding at a special term of the supreme court, held within the judicial district in which the refusal occurred, for an order determining whether the questions in response to which the refusal occurred were relevant and material to the inquiry. Upon the commencement of such proceeding, the sending of such notice of refusal to answer shall be subject to order of the court in which the proceeding was brought in a manner and on such terms as the court may deem just. If a proceeding is not brought within ten days, notice of refusal shall thereupon be sent as provided herein.

#### **§ 2877. Removal of disqualification of public contractors by petition**

1. Any firm, partnership or corporation which has become subject to the cancellation or termination of a contract or disqualification to contract on account of the refusal of a member, partner, director or officer thereof to waive immunity when called to testify, as provided in sections twenty-eight hundred seventy-five and twenty-eight hundred seventy-six of this title, may, upon ten days' notice to the attorney general and to the officer who conducted the investigation before the grand jury or other body in which the refusal occurred, commence a special proceeding at a special term of the supreme court held within the judicial district in which the refusal occurred for a judgment discontinuing the disqualification. Such application shall be in the form of a petition setting forth grounds, including that the cooperation by petitioner with the grand jury or other body at the time of the refusal was such, and the amount and degree of control and financial interest, if any, in the petitioning firm, partnership or corporation by the member, partner, officer or director who refused to waive immunity is such that it will not be in the public interest to cancel or terminate petitioner's contracts or to continue the disqualification, as provided in sections twenty-eight hundred seventy-five and

twenty-eight hundred seventy-six of this title.

A copy of the petition and accompanying papers shall be served with the notices to be given pursuant to this subdivision.

2. Upon the filing of such petition the court may stay as to petitioner, pending a decision upon the petition, the cancellation or termination of any contracts resulting from such refusal upon such terms as to notice or otherwise as may be just.

3. At least two days prior to the return day, the officer who conducted the investigation before the grand jury or other body and the attorney general may file answers to the petition or apply for judgment dismissing the petition as a matter of law. On or before the return day the petitioner may file a reply to the answer.

4. Upon the return day the court may, upon the petition and answer and other papers filed, forthwith render such judgment as the case requires, or if a triable issue of fact is duly raised, it shall forthwith be tried before a court sitting without a jury or before a referee. The provisions of statute or rule governing references in an action shall apply to a reference under this subdivision.

5. The court shall render judgment dismissing the petition on the merits or discontinuing the disqualification upon the ground that the public interest would be served by its discontinuance, and granting such other relief as to the cancellation or termination of contracts as may be appropriate, but without costs to petitioner.

**§ 2603-a. [FN1 – should be 2877-a] Letting of certain contracts involving steel products**

1. Notwithstanding any other provision of law, all public authorities shall award contracts involving steel products as follows:

a. All purchase contracts for supplies, material or equipment involving an estimated expenditure in excess of fifty thousand dollars shall require with respect to materials, supplies and equipment made of, fabricated from, or containing steel components, that such steel components be produced or made in whole or substantial part in the United States, its territories or possessions. The provisions of this paragraph shall not apply to motor vehicles and automobile equipment assembled in Canada in conformity with the United States-Canadian trade agreements known as the “Automotive Products Trade Act of 1965” [FN2] or any amendments thereto.

b. All contracts in excess of one hundred thousand dollars for the construction, reconstruction, alteration, repair, maintenance or improvement of public works shall require that all structural steel, reinforcing steel or other major steel items to be incorporated in the work of the contract shall be produced or made in whole or substantial part in the United States, its territories or possessions.

2. The provisions of this section shall not apply if the governing board or body of such public authority, in its discretion, determines that such provisions would result in unreasonable costs or that such steel products or steel components cannot be produced or made in the United States in sufficient and reasonably available quantities or of satisfactory quality or design.

### **§ 2878. Statement of non-collusion in bids or proposals to public authority**

Every bid or proposal hereafter made to a public authority or to any official of any public authority created by the state or any political subdivision, where competitive bidding is required by statute, rule, regulation or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: Non-collusive bidding certification.

“(a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.”

(b) A bid shall not be considered for award nor shall any award be made where (a)(1) [FN1] (2) and (3) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a)(1) [FN1] (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).



2. [FN2] Any bid hereafter made to any public authority or to any official of any public authority created by the state or any political subdivision, by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in subdivision one of this section [FN2], shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

### **§ 2878-a. Purchasing of products**

1. All products purchased shall be recycled products, which meet contract specifications, unless the only available product does not contain recycled content, and provided that the cost of the recycled product does not exceed a cost premium of ten percent above the cost of a comparable product that is not a recycled product or, if at least fifty percent of the secondary materials utilized in the manufacture of that product are generated from the waste stream in New York state, the cost of the recycled product does not exceed a cost premium of fifteen percent above the cost of a comparable product that is not a recycled product. For the purpose of this section and until July first, nineteen hundred ninety-six, "recycled product" shall mean any product which has been manufactured from secondary materials, as defined in subdivision one of section two hundred sixty-one of the economic development law, and meets secondary material content requirements adopted by the office of general services under subdivision one of section one hundred seventy-seven of the state finance law for products available to the public authority under state contract or, if no such contract for such product is available to the public authority, any product which meets the secondary material content requirements adopted by the public authority with respect to a specific commodity procurement by the public authority. On and after July first, nineteen hundred ninety-six, "recycled product" shall mean, for the purposes of this section, any product which has been manufactured from secondary materials, as defined in subdivision one of section two hundred sixty-one of the economic development law, and which meets the requirements of subdivision two of section 27-0717 of the environmental conservation law and regulations promulgated pursuant thereto.

2. Whenever a public authority, corporation or commission shall purchase or cause the purchase of printing on recycled paper, it shall require the printed material to contain the official state recycling emblem established pursuant to subdivision two of section 27-0717 of the environmental conservation law and regulations promulgated pursuant thereto if such paper has been approved by the department of environmental conservation as satisfying the requirements of such statute and regulations, or, if such paper has not been so approved, require the printed material to include a printed statement which indicates the percentages of pre-consumer and post-consumer recycled material content of such paper.

### **§ 2878-b. Source separation of wastes**

1. No later than September first, nineteen hundred eighty-nine each public authority, corporation or commission shall devise and institute a program to source separate waste paper

generated within its facilities.

Such program shall include marketing arrangements and appropriate procedures to ensure the recovery of discarded paper in a noncontaminated condition. This program may be phased in, utilizing those office facilities most conducive to operation of a source separation program, but shall be fully implemented by July first, nineteen hundred ninety.

2. No later than July first, nineteen hundred ninety, each public authority, corporation or commission shall devise and institute a program to source separate all other waste generated within its facilities that is not covered by this section. Such program shall include marketing arrangements and appropriate procedures to ensure the recovery of waste for which the full avoided costs of proper collection, transportation and disposal of source separated materials are equal to or greater than the cost of collection, transportation and sale of said material less the amount received from the sale of said material. This program may be phased in, utilizing those office facilities most conducive to operation of a source separation program but shall be fully implemented by July first, nineteen hundred ninety-one.

3. A public authority, corporation or commission occupying facilities made available or provided by the office of general services may comply with the provisions of this section by participating in a program conducted by the office of general services pursuant to subdivisions four and five of section one hundred seventy-seven of the state finance law.

#### **§ 2879. Procurement contracts**

1. Every public authority and public benefit corporation, a majority of the members of which consist of persons either appointed by the governor or who serve as members by virtue of holding a civil office of the state, or a combination thereof, (such entities to be hereinafter in this section referred to as "corporation") shall adopt by resolution comprehensive guidelines which detail the corporation's operative policy and instructions regarding the use, awarding, monitoring and reporting of procurement contracts. Guidelines approved by the corporation shall be annually reviewed and approved by the corporation.

2. For purposes of this section, procurement contracts shall mean any written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of five thousand dollars or more.

3. The guidelines approved by the corporation shall include, but not be limited to the following:

(a) A description of the types of goods purchased, and for procurement contracts for services, a description of those areas of responsibility and oversight requiring the use of personal services and the reasons for the use of personal services in such areas.

(b) Requirements regarding the selection of contractors, which shall include provisions:

(i) for the selection of such contractors on a competitive basis, and provisions relating to the

circumstances under which the board may by resolution waive competition;

(ii) describing when the award of procurement contracts shall require approval of the board by resolution, provided that any contract involving services to be rendered over a period in excess of one year shall require the approval of the board by resolution and an annual review of the contract by the board;

(iii) setting forth responsibilities of contractors;

(iv) as used in this subparagraph, the term "professional firm" shall be defined as any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering or surveying.

The corporation shall not refuse to negotiate with a professional firm solely because the ratio of the "allowable indirect costs" to direct labor costs of the professional firm or the hourly labor rate in any labor category of the professional firm exceeds a limitation generally set by the corporation in the determination of the reasonableness of the estimated cost of services to be rendered by the professional firm, but rather the corporation should also consider the reasonableness of cost based on the total estimated cost of the service of the professional firm which should include, among other things, all the direct labor costs of the professional firm for such services plus all "allowable indirect costs," other direct costs, and negotiated profit of the professional firm. "Allowable indirect costs" of a professional firm are defined as those costs generally associated with overhead which cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific state contract or allowability limits.

(c) An identification of those areas or types of contracts for which minority or women-owned business enterprises may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises. For the purposes of this section, a minority business enterprise means any business enterprise, including a sole proprietorship, partnership or corporation that is:

(i) at least fifty-one percent owned by one or more minority group members or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned by one or more minority group members;

(ii) an enterprise in which the minority ownership is real, substantial and continuing;

(iii) an enterprise in which the minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and

(iv) an enterprise authorized to do business in New York state, independently owned and operated, and not dominant in its field.

(d) For the purposes of this section, a minority group member means a United States citizen or

permanent resident alien who is and can demonstrate membership in one of the following groups:

(i) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

(ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

(iii) Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or

(iv) Native American persons having origins in any of the original peoples of North America.

(e) For the purposes of this section, a women-owned business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation which is:

(i) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;

(ii) an enterprise in which the ownership interest of women is real, substantial and continuing;

(iii) an enterprise in which the women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and

(iv) an enterprise authorized to do business in New York state, independently owned and operated, and not dominant in its field.

(f) A listing of the types of provisions to be contained in procurement contracts, including provisions concerning the nature and monitoring of the work to be performed, the use of corporate supplies and facilities, the use of corporate personnel and any other provisions.

(g) Provisions regarding procurement contracts, which involve former officers or employees of the corporation.

(h) Procedures regarding procurement contracts which are exempt from the publication requirements of article four-C of the economic development law.

(i) Policies to promote the participation by New York state business enterprises and New York state residents in procurement contracts, including, but not limited to:

(i) providing for the corporation to collect and to consult the specifications of New York state business enterprises in developing specifications for any procurement contract for the purchase of goods where possible, practicable, feasible and consistent with open bidding, except for

procurement contracts for which the corporation would be expending funds received from another state. The corporation shall, where feasible, make use of the stock item specification forms prepared by the commissioner of general services, and where necessary, consult with the commissioner of the office of general services, in developing such specifications and make such determinations; and

(ii) with the cooperation of the department of economic development and through cooperative efforts with contractors, providing for the notification of New York state business enterprises of opportunities to participate as subcontractors and suppliers on procurement contracts let by the corporation in an amount estimated to be equal to or greater than one million dollars and promulgating procedures which will assure compliance by contractors with such notification. Once awarded the contract such contractors shall document their efforts to encourage the participation of New York state business enterprises as suppliers and subcontractors on procurement contracts equal to or greater than one million dollars. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has (a) solicited bids, in a timely and adequate manner, from New York state business enterprises including certified minority and women-owned business, or (b) contacted the New York state department of economic development to obtain listings of New York state business enterprises, or (c) placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York state, or (d) participated in bidder outreach conferences. If the contractor determines that New York state business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent; and

(iii) except for procurement contracts for which the corporation would be expending funds received from another state, the corporation shall include in all bid documents provided to potential bidders a statement that information concerning the availability of New York state subcontractors and suppliers is available from the New York state department of economic development, which shall include the directory of certified minority and women-owned businesses, and it is the policy of New York state to encourage the use of New York state subcontractors and suppliers, and to promote the participation of minority and women-owned businesses where possible, in the procurement of goods and services; and

(iv) with the cooperation of the community services division of the department of labor and through cooperative efforts with contractors, providing for the notification of New York state residents of employment opportunities arising in New York state out of procurement contracts let by the corporation in an amount estimated to be equal to or greater than one million dollars; and promulgating procedures which will assure compliance by contractors with such notification by requiring contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the community services division, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements; and

(v) including in each set of documents soliciting bids on procurement contracts to let by the corporation a statement notifying potential bidders located in foreign countries that the corporation may assign or otherwise transfer offset credits created by such procurement contract to third parties located in New York state; providing for the assignment or other form of transfer of offset credits created by such procurement contracts, directly or indirectly, to third parties located in New York state, in accordance with the written directions of the commissioner of economic development; and providing for the corporation to otherwise cooperate with the department of economic development in efforts to get foreign countries to recognize offset credits assigned or transferred to third parties located in New York state created by such procurement contracts; and

(vi) promulgating procedures which will assure compliance with the federal equal employment opportunity act of 1972 (P.L. 92-261), [FN1] as amended, by contractors of the corporation.

(j) For the purposes of this section, a “New York state business enterprise” means a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the corporation and which are substantially manufactured, produced or assembled in New York state, or services which are sought by the corporation and which are substantially performed within New York state.

(k) For the purposes of this section, a “New York resident” means a natural person who maintains a fixed, permanent and principal home located within New York state and to which such person, whenever temporarily located, always intends to return.

4. Each corporation shall have the power from time to time to amend such procurement contract guidelines in accordance with the provisions of this section.

5. (a) Each corporation shall notify the commissioner of economic development of the award of a procurement contract for the purchase of goods or services from a foreign business enterprise in an amount equal to or greater than one million dollars simultaneously with notifying the successful bidder therefor. No corporation shall thereafter enter into a procurement contract for said goods or services until at least fifteen days has elapsed, except for procurement contracts awarded on an emergency or critical basis, or where the commissioner of economic development waives the provisions of this sentence. The notification to the commissioner of economic development shall include the name, address and telephone and facsimile number of the foreign business enterprise, a brief description of the goods or services to be obtained pursuant to the proposed procurement contract, the amount of the proposed procurement contract, the term of the proposed procurement contract, and the name of the individual at the foreign business enterprise or acting on behalf of the same who is principally responsible for the proposed procurement contract. Such notification shall be used by the commissioner of economic development solely to provide notification to New York state business enterprises of opportunities to participate as subcontractors and suppliers on such procurement contracts, to promote and encourage the location and development of new business in the state, to assist New York state business enterprises in obtaining offset credits from foreign countries, and to otherwise investigate, study and undertake means of promoting and encouraging the

prosperous development and protection of the legitimate interest and welfare of New York state business enterprises, industry and commerce.

(b) As used in this section, the following terms shall have the following meanings, unless a different meaning appears from the context:

(i) "Foreign business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods which are sought by the corporation and which are substantially produced outside New York state, or services, other than construction services, sought by the corporation which are substantially performed outside New York state. For purposes of construction services, foreign business enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York state.

(ii) "New York state business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the corporation and which are substantially manufactured, produced or assembled in New York state, or services, other than construction services, which are sought by the corporation and which are substantially performed within New York state. For purposes of construction services, a New York state business enterprise shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which has its principal place of business in New York state.

(iii) "Discriminatory jurisdiction" shall mean any other country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York state business enterprise in the procurement of goods and services by the same or a non-governmental entity influenced by the same. Such discrimination may include, but is not limited to, any law, regulation, procedure or practice, terms or license, authorization, or funding or bidding rights which requires or encourages any agency or instrumentality of the state or political subdivision thereof or non-governmental entity influenced by the same to discriminate against a New York state business enterprise.

(c) In including any additional business enterprises on invitations to bid for the procurement of goods or services, the chief executive officer of the corporation shall not include any foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to subdivision six of section one hundred sixty-five of the state finance law, except, however, business enterprises which are New York state business enterprises as defined by this section. The corporation may waive the application of the provisions of this section whenever the chief executive officer of the corporation determines in writing that it is in the best interests of the state to do so. The chief executive officer of the corporation shall deliver each such waiver to the commissioner of economic development.

(d) A corporation shall not enter into a contract with a foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to subdivision six of section one hundred sixty-five of the state finance law. The provisions of this section may be waived by the chief executive officer of the corporation if the chief executive officer of the corporation determines in writing that it is in the best interests of the state to do so. The chief executive officer of the corporation shall deliver each such waiver to the commissioner of economic development.

6. Each corporation, as part of the guidelines established pursuant to subdivision three of this section, shall establish policies regarding the preparation of publicly available reports on procurement contracts entered into by such corporation. Such policies shall provide, at the minimum, for the preparation of a report no less frequently than annually, summarizing procurement activity by such corporation for the period of the report, including a listing of all procurement contracts entered into, all contracts entered into with New York state business enterprises and the subject matter and value thereof, all contracts entered into with foreign business enterprises, and the subject matter and value thereof, the selection process used to select such contractors, all procurement contracts which were exempt from the publication requirements of article four-C of the economic development law, the basis for any such exemption and the status of existing procurement contracts.

7. Each corporation shall annually prepare and approve a report on procurement contracts, which shall include the guidelines, as specified in subdivision three of this section, an explanation of the guidelines and any amendments thereto since the last annual report. Such report on procurement contracts may be a part of any other annual report that the corporation is required to make.

8. (a) Each corporation shall annually submit its report on procurement contracts to the division of the budget and copies thereof to the department of audit and control, the department of economic development, the senate finance committee and the assembly ways and means committee.

(b) Each corporation shall make available to the public copies of its report on procurement contracts upon reasonable request therefor.

9. Nothing contained in this section shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of this section.

### **§ 2880. Prompt payment**

1. Definitions. As used in this section, the following terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

(a) "Corporation" means every public authority and public benefit corporation a majority of the



governing board members of which are either appointed by the governor or serve as members by virtue of their service as an officer of a state department, division, agency, board or bureau, or combination thereof.

(b) "Contract" means an enforceable agreement entered into between a corporation and a contractor.

(c) "Contractor" means any person, partnership, private corporation or association:

(i) selling materials, equipment, or supplies or leasing property or equipment to a corporation;

(ii) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for or on behalf of a corporation; or

(iii) rendering or providing services to a corporation pursuant to a contract.

(d) "Designated payment office" means the office designated by the corporation to which a proper invoice is to be submitted by a contractor.

(e) "Prompt payment" means payment of a debt due and owing by a corporation before interest accrues thereon pursuant to a statement adopted in accordance with this section.

(f) "Proper invoice" means a written request for a contract payment that is submitted by a contractor setting forth the description, price and quantity of goods, property, or services delivered or rendered, in such form and supported by such other substantiating documentation as the corporation may reasonably require.

(g) "Receipt of an invoice" means (i) the date on which a proper invoice is actually received in the designated payment office, or (ii) the date on which the corporation receives the purchased goods, property, or services covered by the proper invoice, whichever is later.

(h) "Set-off" means the reduction by the corporation of a payment due to a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the corporation.

(i) "Statement" means the rules and regulations adopted by a corporation pursuant to subdivision two of this section and any amendments thereto.

2. Statement adoption. Within one hundred twenty days after either the effective date of this section or the beginning of the existence of the respective corporation, whichever is later, each corporation shall promulgate rules and regulations detailing its prompt payment policy.

3. Statement contents. (a) The statement shall include, but not be limited to, a reference to this section and the following for each type or category of contract as determined by the corporation:

(i) a description of the procedure to be followed by a contractor in requesting payment under a contract;

(ii) a schedule setting forth the time in which the corporation will make prompt payment under a contract;

(iii) a declaration that interest will be paid when prompt payment is not made and a statement of the rate at which such interest will accrue;

(iv) a list of the sources of funds available to the corporation to pay an interest penalty on each type or category of contract; and

(v) a list of facts and conditions which in the opinion of the corporation's governing body reasonably justify extension of the date by which contract payment must be made in order for the corporation not to become liable for interest payments in accordance with subdivision seven of this section.

(b) Such facts and conditions may include, but shall not be limited to, the following when:

(i) in accordance with specific statutory or contractual provisions, payment must be preceded by an inspection period or by an audit to determine the resources applied or used by a contractor in fulfilling the terms of the contract;

(ii) the necessary state government appropriation required to authorize payment has yet to be enacted;

(iii) a proper invoice must be examined by the federal government prior to payment; and

(iv) such date by which contract payment must be made is modified in accordance with subdivision eight of this section.

4. Statement amendment. Each corporation shall have the power to amend its statement by promulgating amended rules and regulations.

5. Statement filing. Each corporation shall, within thirty days after the statement's adoption, file a copy of such statement, and amendments thereto, with the state comptroller, the state director of the budget, the chairperson of the senate finance committee, and the chairperson of the assembly ways and means committee.

6. Contract incorporation. The statement in effect at the time of creation of a contract is hereby incorporated into and made a part of that contract.

7. Interest eligibility and computation. (a) In order for the corporation not to be liable for the payment of interest, contract payment must be made within thirty calendar days, excluding

legal holidays, after the receipt of an invoice for the amount of the contract payment due; except when the contract payment is of the type where the facts and conditions are as defined pursuant to subparagraph (v) of paragraph (a) of subdivision three of this section. Any time taken to satisfy or rectify any of the facts or conditions described in subdivision three (except for subparagraph (iv) of paragraph (b) of subdivision three) of this section shall extend the date by which contract payment must be made in order for the corporation not to become liable for interest payments by an equal period of time.

(b) A corporation, which must process payments through the state department of audit and control, the department of taxation and finance, or some other entity not under the corporation's control, shall not be liable for interest due to the process time taken by such entity.

(c) Notwithstanding any other provision of law to the contrary, interest shall be computed at the rate equal to the overpayment rate set by the commissioner of taxation and finance pursuant to subsection (e) of section one thousand ninety-six of the tax law.

(d) A corporation shall not be liable for payment of interest when such interest as computed pursuant to the provisions of paragraph (c) of this subdivision is less than ten dollars.

8. Each corporation shall have fifteen calendar days after receipt of an invoice by the corporation at its designated payment office to notify the contractor of (a) defects in the delivered goods, property, or services, (b) defects in the invoice, or (c) suspected improprieties of any kind; and the existence of such defects or improprieties shall prevent the commencement of the time period specified in subdivision seven of this section. When a corporation fails to notify a contractor of such defects or suspected improprieties within fifteen calendar days of receiving the invoice, the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the fifteenth day and the day that notification was transmitted to the contractor. If the corporation, in such situations, fails to provide reasonable grounds for its contention that a defect or impropriety exists, the date by which contract payment must be made in order for the corporation not to become liable for interest payments shall be calculated from the date of receipt of an invoice.

9. Notwithstanding any provision of the public service law or any tariffs promulgated pursuant to that law to the contrary, the provisions of this section shall provide the sole basis for determining and making interest payments on invoices submitted by public utilities to corporations.

10. A proper invoice submitted by the contractor shall be required to initiate any payment, except where the contract provides that the contractor will be paid at predetermined intervals without having to submit an invoice for each such scheduled payment and, for the purposes of determining eligibility for payment of interest and subject to the exception and time-to-rectify provisions of subdivisions three and seven of this section, the date by which contract payment must be made in order for the corporation not to become liable for interest payments shall be the payment due date specified in accordance with the contract.

11. Annual report. (a) Each corporation shall annually prepare a report on the scope and implementation of its prompt payment policy which shall include, but not be limited to:

(i) A listing of the types or categories of contracts which the corporation entered into during the twelve month period covered by the report, together with a brief indication of whether each such type or category of contract was subject to the prompt payment requirements promulgated by the corporation and, if not, why not;

(ii) The number and amounts of interest payments made for contracts arranged according to each such type or category;

(iii) The number of interest chargeable days and the total number of days taken to process each late contract payment; and

(iv) A summary of the principal reasons that such late payments occurred.

(b) Within ninety days after the completion of its fiscal year, each corporation shall file copies of the report required by paragraph (a) of this subdivision with the state comptroller, the state director of the budget, the chairperson of the senate finance committee, and the chairperson of the assembly ways and means committee.

12. Public access. (a) Each corporation shall make available to the public, upon a reasonable request therefor, copies of its statement and annual report.

(b) Each contractor doing business with a corporation shall be given a copy of that corporation's statement.

13. Inapplicability of section. The provisions of this section shall not apply to payments due and owing by a corporation:

(a) under the eminent domain procedure law;

(b) as interest allowed on judgments rendered by a court pursuant to any provision of law other than those contained in this section;

(c) to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government including, but not limited to, counties, cities, towns, villages, school districts, special districts, or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;

(d) in situations where the corporation exercises a legally authorized set-off against all or part of the payment due the contractor.

14. The provisions of this section shall not apply to the facilities development corporation or the

State University Construction Fund.

15. Judicial review. Any determination made by a corporation pursuant to this section which prevents the commencement of the time in which interest will be paid shall be subject to judicial review in a proceeding pursuant to article seventy-eight of the civil practice law and rules. Such proceedings shall only be commenced in the absence, or upon completion, of other review procedures specified in the contract or by regulation.

16. Court action or other legal processes. (a) Notwithstanding any other provisions of law to the contrary, the liability of a corporation, insofar as incurring an obligation to make an interest payment to a contractor pursuant to the terms of this section is concerned, shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in paragraph (a) of this subdivision, any interest obligation incurred by a corporation after the date specified therein pursuant to any provision of law other than this section shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

#### **§ 2880-a. Contracts for the financing of local water supply systems**

Notwithstanding any other provisions of this title or the provisions of any general, special or local law, any public benefit corporation created pursuant to article five of this chapter which is authorized by law to produce, develop, distribute and sell water, water services, facilities and commodities shall have the power:

1. to enter into contracts, with any entity specified in subdivision two of this section, providing for the financing of the acquisition and construction of improvements to the water supply system or water distribution system of such entity, the terms of which may include, among other provisions, provisions requiring such entity to purchase water only from such public benefit corporation during the term of such contract, which term shall be limited to the lesser of (a) thirty years or (b) the probable useful life of the items for which any bonds are issued by such public benefit corporation to finance the acquisition and construction of improvements to such water supply system or water distribution system, and

2. to issue bonds, in accordance with the applicable provisions of this chapter, to finance the acquisition and construction of improvements to any water supply system or water distribution system owned by any water authority, municipality, county, town, village, water district or Indian tribe to which such public benefit corporation is authorized by law to furnish water.

### **TITLE 5: FUNDS AND ACCOUNTS OF PUBLIC AUTHORITIES**

#### **§ 2890. Funds and accounts of public authorities**

Notwithstanding any inconsistent provision of this chapter or any other general, special or local law, every authority or commission hereafter created by this chapter is hereby empowered to establish such funds and accounts as it may deem necessary subject to such agreements as such authority or commission shall conclude with the holders of its bonds or notes.

## **TITLE 5-A: DISPOSITION OF PROPERTY BY PUBLIC AUTHORITY**

### **§ 2895. Definitions**

For the purposes of this title, unless a different meaning is required by the context:

1. "Contracting officer" shall mean the officer or employee of a public authority who shall be appointed by resolution of the board of the public authority to be responsible for the disposition of property.
2. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal or real property in accordance with section twenty-eight hundred ninety-seven of this title.
3. "Property" shall mean personal property in excess of five thousand dollars in value, real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or

### **§ 2896. Duties of public authorities with respect to the disposal of property**

1. Every authority, as defined in section two of this chapter, shall adopt by resolution comprehensive guidelines which shall (a) detail the public authority's operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of property, and (b) designate a contracting officer who shall be responsible for the public authority's compliance with, and enforcement of, such guidelines. Such guidelines shall be consistent with, and shall require the public authority's contracting activities to comply with this section, the authorities enabling legislation and any other applicable law for the disposal of property, except that such guidelines may be stricter than the provisions of this section, the authorities enabling legislation and any other applicable law for the disposal of property if the public authority determines that additional safeguards are necessary to assure the integrity of its disposition activities. Guidelines approved by the public authority shall be annually reviewed and approved by the governing body of the public authority. On or before the thirty-first day of March in each year, the public authority shall file with the comptroller a copy of the guidelines most recently reviewed and approved by the public authority, including the name of the public authority's designated contracting officer. At the time of filing such guidelines with the comptroller, every public authority shall also post such guidelines on the public authority's internet website. Guidelines posted on the public authority's internet website shall be maintained on such website at least until the procurement guidelines for the following year are posted on such website.

2. Each public authority shall:

a. maintain adequate inventory controls and accountability systems for all property under its control;

b. periodically inventory such property to determine which property shall be disposed of;

c. produce a written report of such property in accordance with subdivision three of this section;

d. transfer or dispose of such property as promptly as possible in accordance with section twenty-eight hundred ninety-seven of this title.

3. a. Each public authority shall publish, not less frequently than annually, a report listing all real property of the public authority. Such report shall consist of a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the public authority and the name of the purchaser for all such property sold by the public authority during such period.

b. The public authority shall deliver copies of such report to the comptroller, the director of the budget, the commissioner of general services, and the legislature.

#### **§ 2897. Disposal of public authority property**

1. Supervision and direction. Except as otherwise provided in this section, the contracting officer designated by each public authority shall have supervision and direction over the disposition of property of such public authority.

2. Custody and control. The custody and control of the property of a public authority, pending its disposition, and the disposal of such property, shall be performed by the public authority in possession thereof or by the commissioner of general services when so authorized under this section.

3. Method of disposition. Subject to section twenty-eight hundred ninety-six of this title, any public authority may dispose of property for not less than the fair market value of such property by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the contracting officer deems proper, and it may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this section. Provided, however, that no disposition of real property, any interest in real property, or any other property which because of its unique nature is not subject to fair market pricing shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction.

4. Sales by the commissioner of general services. When it shall be deemed advantageous to the

state, any public authority may enter into an agreement with the commissioner of general services where under such commissioner may dispose of property of such public authority under terms and conditions agreed to by the public authority and the commissioner of general services. In disposing of any such property of a public authority, the commissioner of general services shall be bound by the terms of this title and references to the contracting officer shall be deemed to refer to such commissioner.

5. Validity of deed, bill of sale, lease, or other instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of any public authority, purporting to transfer title or any other interest in property of a public authority under this title shall be conclusive evidence of compliance with the provisions of this title insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to the closing.

6. Bids for disposal; advertising; procedure; disposal by negotiation; explanatory statement. a. All disposals or contracts for disposal of property of a public authority made or authorized by the contracting officer shall be made after publicly advertising for bids except as provided in paragraph c of this subdivision.

b. Whenever public advertising for bids is required under paragraph a of this subdivision:

(i) the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property;

(ii) all bids shall be publicly disclosed at the time and place stated in the advertisement; and

(iii) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the state, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

c. Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to paragraphs a and b of this subdivision but subject to obtaining such competition as is feasible under the circumstances, if:

(i) the personal property involved is of a nature and quantity which, if disposed of under paragraphs a and b of this subdivision, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;

(ii) the fair market value of the property does not exceed fifteen thousand dollars;

(iii) bid prices after advertising therefor are not reasonable, either as to all or some part of the



property, or have not been independently arrived at in open competition;

(iv) the disposal will be to the state or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(v) the disposal is for an amount less than the estimated fair market value of the property, the terms of such disposal are obtained by public auction or negotiation, the disposal of the property is intended to further the public health, safety or welfare or an economic development interest of the state or a political subdivision (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits), the purpose and the terms of such disposal are documented in writing and approved by resolution of the board of the public authority; or

(vi) such action is otherwise authorized by law.

d. (i) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:

(A) any personal property which has an estimated fair market value in excess of fifteen thousand dollars;

(B) any real property that has an estimated fair market value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses (C) through (E) of this subparagraph;

(C) any real property disposed of by lease for a term of five years or less, if the estimated fair annual rent is in excess of one hundred thousand dollars for any of such years;

(D) any real property disposed of by lease for a term of more than five years, if the total estimated rent over the term of the lease is in excess of one hundred thousand dollars; or

(E) any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

(ii) Each such statement shall be transmitted to the persons entitled to receive copies of the report required under section twenty-eight hundred ninety-six of this title not less than ninety days in advance of such disposal, and a copy thereof shall be preserved in the files of the public authority making such disposal.

## **TITLE 6: EMINENT DOMAIN TAKING; PROPERTY OF PUBLIC CORPORATIONS**

### **§ 2900. Compensation; eminent domain taking**

When property of a public benefit corporation is taken in the exercise of the power of eminent domain for a purpose substantially different from that for which it is held by such public benefit corporation, just compensation to the public benefit corporation shall be made in the same manner, to the same extent and subject to the same limitations as though it were private property.

## TITLE 7: INVESTMENTS OF PUBLIC AUTHORITIES

### § 2925. Investments of funds by public authorities and public benefit corporations; general provisions

1. Every public authority and every public benefit corporation whether or not such corporation is otherwise governed by this chapter, (such entities to be hereinafter in this title referred to as "corporation") shall by resolution adopt comprehensive investment guidelines which detail the corporation's operative policy and instructions to officers and staff regarding the investing, monitoring and reporting of funds of the corporation. The investment guidelines approved by the corporation shall be annually reviewed and approved by the corporation.

2. Funds of the corporation, for purposes of this title, shall consist of all moneys and other financial resources available for investment by the corporation on its own behalf or on behalf of any other entity or individual.

3. The investment guidelines approved by the corporation shall include, but not be limited to the following:

(a) A detailed list of the permitted investments of the corporation, which shall be consistent with the appropriate provisions of law relating to the corporation and any additional requirements pursuant to any contract with bondholders and noteholders.

(b) Procedures and provisions to fully secure the corporation's financial interest in investments; provided that the guidelines may include a description of the circumstances under which the corporation's financial interest in investments may be less than fully secured.

(c) A requirement that the corporation shall enter into written contracts pursuant to which investments are made, unless the corporation shall by resolution determine that a written contract is not practical or that there is not a regular business practice of written contracts with respect to a specific investment or transaction, in which case the corporation shall adopt procedures covering such investment or transaction. Such contracts and procedures shall include provisions:

(i) deemed necessary and sufficient to secure in a satisfactory manner the corporation's financial interest in each investment;

(ii) covering the use, type and amount of collateral or insurance for each investment;

(iii) establishing a method for valuation of collateral, and procedures for monitoring the valuation of such collateral on a regular basis;

(iv) for the monitoring, control, deposit and retention of investments and collateral which shall include, in the case of a repurchase agreement, a requirement that the obligations purchased be physically delivered for retention to the corporation or its agent (which shall not be an agent of the party with whom the corporation enters into such repurchase agreement), unless such obligations are issued in book-entry form, in which case the corporation shall take such other action as may be necessary to obtain title to or a perfected security interest in such obligations.

(d) Standards for the diversification of investments, including diversification with respect to types of investments and firms with which the corporation transacts business.

(e) Standards for the qualification of investment bankers, brokers, agents, dealers and other investment advisers and agents which transact business with the corporation, such as criteria covering quality, reliability, experience, capitalization, size and any other factors that, in the judgment of the corporation, make a firm qualified to transact business with the corporation.

(f) Provisions for reporting on the investments of the corporation, including provisions for an annual independent audit of all investments, the results of which shall be available to the board at the time the annual review and approval of investment guidelines is conducted by the corporation.

4. Each corporation shall have the power from time to time to amend such investment guidelines in accordance with the provisions of this title.

5. Each corporation shall direct the preparation and filing with the board of quarterly reports, or reports covering such other period as may be approved by the corporation, from a designated officer or employee regarding any new investments, the inventory of existing investments, and the selection of investment bankers, brokers, agents, dealers or auditors.

6. Each corporation shall annually prepare and approve an investment report which shall include the investment guidelines, as specified in subdivision three of this section, amendments to such guidelines since the last investment report, an explanation of the investment guidelines and amendments, the results of the annual independent audit, the investment income record of the corporation and a list of the total fees, commissions or other charges paid to each investment banker, broker, agent, dealer and adviser rendering investment associated services to the corporation since the last investment report. Such investment report may be a part of any other annual report that the corporation is required to make.

7. (a) Each corporation, a majority of the members of which consist of persons appointed by the governor or who serve as members by virtue of holding a civil office of the state, or a combination thereof, shall annually submit its investment report to the division of the budget and copies thereof to the department of audit and control, the senate finance committee and the assembly ways and means committee.

(b) Each corporation, other than a corporation included under paragraph (a) of this subdivision, shall annually submit its investment report to the chief executive officer and chief fiscal officer of each municipality for the benefit of which it was created and to the department of audit and control.

(c) Each corporation shall make available to the public copies of its investment report upon reasonable request therefor.

8. Nothing contained in this section shall be deemed to alter, affect the validity of, modify the terms of or impair any contract, agreement or investment of funds made or entered into in violation of, or without compliance with, the provisions of this title.

**§ 2926. Interest rate exchange or similar agreements for court facilities and combined occupancy structures and health facilities**

1. In connection with the issuance of bonds, notes, or other obligations, or in connection with such bonds, notes, or other obligations already outstanding, for court facilities and combined occupancy structures pursuant to section sixteen hundred eighty-b of this chapter, and health facilities pursuant to paragraph (b) of subdivision one of section eight of section one of chapter three hundred ninety-two of the laws of nineteen hundred seventy-three, the dormitory authority shall have the power to:

(a) enter into interest rate exchange or similar agreements with any person under such terms and conditions as the dormitory authority may determine, including provisions as to default or early termination and indemnification by the dormitory authority or any other party thereto for loss of benefits as a result thereof; and

(b) procure insurance, letters of credit or other credit enhancement with respect to agreements described in paragraph (a) of this subdivision; and

(c) provide security for the payment or performance of its obligations with respect to agreements described in paragraph (a) of this subdivision from such sources and with the same effect as authorized by applicable law with respect to security for its bonds, notes or other obligations; and

(d) modify, amend, replace, or enter into new agreements, for the purpose of reducing or eliminating a situation of risk or exposure under an existing agreement, including, but not limited to a counterparty downgrade, default, or other potential economic loss.

2. Any interest rate exchange or similar agreement entered into pursuant to subdivision one of this section shall be subject to the following limitations:

(a) any such agreement shall be in the form of a written contract with a counterparty to provide for an exchange of payments based upon interest rates, and shall be for exchanges in currency

of the United States of America only; and

(b) the counterparty thereto shall have credit ratings from at least two nationally recognized statistical rating agencies that are within the three highest investment grade categories, or the payment obligations of the counterparty shall be unconditionally guaranteed by an entity with such credit ratings; and

(c) the written contract shall require that, should the rating of the counterparty, if its payment obligations are not unconditionally guaranteed by another entity, or should the rating of the entity unconditionally guaranteeing the payment obligations of the counterparty, if so secured, fall below the rating required by paragraph (b) of this subdivision, that the obligations of such counterparty shall be fully and continuously collateralized by direct obligations of, or obligations the principal and interest on which are guaranteed by, the United States of America, with a net market value of at least one hundred two percent of the net market value of the contract to the dormitory authority, and such collateral shall be deposited with the dormitory authority or an agent thereof; and

(d) the total notional amount of such interest rate exchange or similar agreements entered into by the dormitory authority shall not exceed an amount equal to twenty per centum of the total amount of bonds, notes or other obligations outstanding or to be issued on behalf of a participating municipality pursuant to section sixteen hundred eighty-b of this chapter; provided, however, that such total notional amount shall not include the notional amount of interest rate exchange or similar agreements entered into for the purpose of reducing or eliminating a situation of risk or exposure under an existing agreement, including, but not limited to a counterparty downgrade, default, or other potential economic loss; and

(e) the total notional amount of such interest rate exchange or similar agreements entered into by the dormitory authority shall not exceed an amount equal to twenty per centum of the total amount of bonds, notes or other obligations outstanding or to be issued on behalf of a participating municipality pursuant to paragraph (b) of subdivision one of section eight of section one of chapter three hundred ninety-two of the laws of nineteen hundred seventy-three; provided, however, that such total notional amount shall not include the notional amount of interest rate exchange or similar agreements entered into for the purpose of reducing or eliminating a situation of risk or exposure under an existing agreement, including, but not limited to a counterparty downgrade, default, or other potential economic loss.

3. (a) Prior to authorizing the approval of any contract for interest rate exchange or similar agreement pursuant to subdivision one of this section, the board of the dormitory authority shall adopt written guidelines addressing the following:

(i) the conditions under which such contracts can be entered into;

(ii) the methods by which such contracts are to be solicited and procured;

(iii) the form and content such contracts shall take;

- (iv) the aspects of risk exposure associated with such contracts;
- (v) standards and procedures for counterparty selection;
- (vi) the procurement of credit enhancement, liquidity facilities, or the setting aside of reserves in connection with such contracts;
- (vii) collateralization or other requirements for securing the financial interest in such contracts;
- (viii) the methods to be used to reflect such contracts in the dormitory authority's financial statements;
- (ix) financial monitoring and periodic assessment of such contracts by the dormitory authority; and
- (x) such other matters relating thereto as the board of the dormitory authority shall deem necessary and proper.

(b) The dormitory authority shall issue a report to the director of the budget, the chairpersons of the senate finance committee and the assembly ways and means committee, and the state comptroller, on or before March first in any state fiscal year in which it enters into or continues to be a party to a contract for interest rate exchange or similar agreement. Such report shall list all such contracts entered into pursuant to this section, and shall include, but not be limited to, the following information for each such contract, as applicable:

- (i) a description of the contract, including a summary of the terms and conditions thereof and the method of procurement;
- (ii) any amounts which were required to be paid and received, and any amounts which actually were paid and received thereunder;
- (iii) any credit enhancement, liquidity facility or reserves associated therewith including an accounting of all costs and expenses incurred, whether or not in conjunction with the procurement of credit enhancement or liquidity facilities;
- (iv) a description of each counterparty;
- (v) an assessment of the counterparty risk, termination risk, and other risks associated therewith.

4. The dormitory authority shall not enter into any interest rate exchange or similar agreement pursuant to this section unless the lease, sublease, or other agreement between the participating municipality and the dormitory authority:

(a) expressly authorizes the dormitory authority to enter into such agreements with respect to bonds, notes or other obligations outstanding or to be issued in connection with court facilities and combined occupancy structures or health facilities for that participating municipality; and

(b) further obligates the participating municipality to pay to the dormitory authority any and all amounts payable by the authority under, or as a result of, such interest rate exchange or similar agreement.

## **TITLE 8: INTERNAL CONTROL RESPONSIBILITIES OF PUBLIC AUTHORITIES**

### **§ 2930. Definitions**

For the purposes of this title, the following terms shall have the following meanings:

1. "Internal control". A process that integrates the activities, plans, attitudes, policies, systems, resources and efforts of the people of an organization working together, and that is designed to provide reasonable assurance that the organization will achieve its objectives and mission. The objectives of an internal control system include, but are not limited to: the safeguarding of assets; checking the accuracy and reliability of accounting data and financial reporting; promoting the effectiveness and efficiency of operations; ensuring compliance with applicable laws and regulations; and encouraging adherence to prescribed managerial policies. Internal control review processes are used periodically to evaluate the ongoing internal control system and to assess and monitor the implementation of necessary corrective actions.

2. "Internal audit". An appraisal activity established by the management of an organization for the review of operations as a means of assuring conformity with management policies and the effectiveness of internal control, and conducted in conformance with generally accepted standards for internal auditing.

3. "Covered authority". Any public authority or public benefit corporation, other than a bi-state authority or public benefit corporation, a majority of whose members are appointed by the governor or serve as members by virtue of holding state offices to which they were appointed by the governor, or any combination thereof.

### **§ 2931. Internal control responsibilities**

The governing board of each covered authority shall: 1. establish and maintain for the authority guidelines for a system of internal control that are in accordance with this article and internal control standards;

2. establish and maintain for the authority a system of internal control and a program of internal control review. The program of internal review shall be designed to identify internal control weaknesses, identify actions that are needed to correct these weaknesses, monitor the implementation of necessary corrective actions and periodically assess the adequacy of the authority's ongoing internal controls;

3. make available to each member, officer and employee a clear and concise statement of the generally applicable managerial policies and standards with which he or she is expected to comply. Such statement shall emphasize the importance of effective internal control to the authority and the responsibility of each member, officer and employee for effective internal control;

4. designate an internal control officer, who shall report to the head of the authority, to implement and review the internal control responsibilities established pursuant to this section; and

5. implement education and training efforts to ensure that members, officers and employees have achieved adequate awareness and understanding of internal control standards and, as appropriate, evaluation techniques.

### **§ 2932. Internal audit responsibilities**

1. The governing board of each covered authority or its designee shall determine, and periodically review the determination of, whether an internal audit function within the covered authority is required. Establishment of such function shall be based upon an evaluation of exposure to risk, costs and benefits of implementation, and any other factors that are determined to be relevant. In the event it is determined that an internal audit function is required, the governing board of each covered authority shall establish an internal audit function, which operates in accordance with generally accepted professional standards for internal auditing. Any such internal audit function shall be directed by an internal audit director who shall report directly to the governing board of the authority. Internal audit director appointments shall be based on appropriate internal auditing credentials of the proposed appointee, consistent with generally accepted standards for internal auditing, including internal auditing education and experience. The internal audit function shall evaluate the authority's internal controls and operations, identify internal control weaknesses that have not been corrected and make recommendations to correct these weaknesses.

2. In the event the governing board does not establish an internal audit function pursuant to subdivision one of this section it shall nevertheless establish and maintain the program of internal control review required by section twenty-nine hundred thirty-one of this title.

## **TITLE 9: INTEREST RATES ON PUBLIC AUTHORITY BONDS AND NOTES**

### **§ 2960. Interest rates**

Notwithstanding any other provisions of this chapter or the provisions of any other general, special or local law, any public authority may agree or contract to pay interest on its certificates, notes or bonds, including those now outstanding, at such rate or rates, without limit, as may be



necessary for an authority to sell such notes or bonds.

## TITLE 10: STATE GOVERNMENTAL COST RECOVERY SYSTEM

### § 2975. Recovery of state governmental costs from public authorities and public benefit corporations

1. Notwithstanding any other provision of law to the contrary, every public authority and every public benefit corporation created by or pursuant to New York state law at least three of whose members are appointed by the governor, whether such authority or corporation is otherwise governed by this chapter (such entities, as so constituted, to be hereafter in this title referred to as “public benefit corporations”), shall reimburse to New York state an allocable share of state governmental costs attributable to the provision of services to public benefit corporations, as determined herein. The payment of such costs by public benefit corporations is a valid and proper purpose for which available authority funds may be applied.

2. (a) Annually the director of the division of the budget of the state of New York (such person to be hereafter in this title referred to as the “director of the budget”), in consultation with the state comptroller, shall determine the total amount of expenses incurred or to be incurred during the state’s fiscal year in connection with the provision of central governmental services to public benefit corporations. Such expenses, in addition to the direct costs of personal service, shall include indirect costs of employee benefits, maintenance and operation, state equipment and facilities, rental for space occupied in state leased facilities or the fair market rental value of space occupied in state owned facilities, and contractual services, all as attributable to the provision of otherwise unreimbursed services to public benefit corporations by the New York state department of audit and control, department of law, executive chamber, division of the budget, the legislature, and such agencies, boards or commissions as the director of the budget determines provide such services to public benefit corporations.

(b) On or before November first, two thousand three and on or before November first of each year thereafter, the director of the budget shall determine the amount owed under this section by each public benefit corporation. The director of the budget may reduce, in whole or part, the amount of such assessment if the payment thereof would necessitate a state appropriation for the purpose, or would otherwise impose an extraordinary hardship upon the affected public benefit corporation. The aggregate amount assessed under this section in any given state fiscal year may not exceed fifty-five million dollars.

3. The state treasurer shall impose and collect such assessments, which shall be paid no later than March thirty-first following the imposition of the assessments, and pay the same into the state treasury to the credit of the general fund.

4. The provisions of subdivisions two and three of this section shall not apply to any public benefit corporation which enters into a contract or agreement with the director of the budget which otherwise provides for cost recovery to the state and includes a provision that, in accordance with this subdivision, subdivisions two and three of this section shall not apply to

such public benefit corporation. The circumstances for the entry into such contract or agreement may include, but shall not be limited to, the following:

(a) where such contract or agreement is for an amount which equals or exceeds the amount of the assessment provided by subdivision two of this section; or

(b) where the payment of all or a portion of the assessment provided by subdivision two of this section would necessitate, in the judgment of the director of the budget, an appropriation therefor by the state.

5. On or before June first, nineteen hundred ninety, and annually on or before June first, the director of the budget shall report to the respective chairpersons of the assembly ways and means committee and senate finance committee the amount of cost recovery obtained pursuant to this title and all contracts and agreements entered into pursuant to subdivision four of this section for the state fiscal year ending on the preceding March thirty-first.

[6. Repealed by L.1999, c. 444, § 8, eff. July 1, 2002.]

#### **§ 2976. Cost recovery on the issuance of certain bonds**

1. Notwithstanding any other law to the contrary, public benefit corporations (which for purposes of this section shall include industrial development agencies created pursuant to title one of article eighteen-A of the general municipal law or any other provision of law) which issue bonds, notes or other obligations shall pay to the state a bond issuance charge upon the issuance of such bonds in an amount determined pursuant to subdivision two of this section. Such charge shall be paid to the state department of taxation and finance, upon forms prescribed therefor, no later than fifteen days from the end of the month within which such bonds are issued.

2. The bond issuance charge shall be computed by multiplying the principal amount of bonds issued by the percentage set forth in the schedule below, provided that: (a) the charge applicable to the principal amount of single family mortgage revenue bonds shall be seven one-hundredths of one percent; (b) the issuance of bonds shall not include the remarketing of bonds; and (c) the issuance of bonds shall not include the current refunding of short term bonds, notes or other obligations for which the bond issuance charge provided by this section has been paid, provided that such current refunding (i) occurs within one year from the issuance of the refunded obligations, or (ii) is part of a program created by a single indenture or bond resolution that provides for the periodic issuance and refunding of short term obligations.

#### SCHEDULE

Principal Amount of Bonds Issued	Percentage Charge
a. \$1,000,000 or less	.14%
b. \$1,000,001 to \$5,000,000	.28%
c. \$5,000,001 to \$10,000,000	.42%
d. \$10,000,001 to \$20,000,000	.56%
e. More than \$20,000,000	.70%

3. The provisions of subdivisions one and two of this section shall not apply to any public benefit corporation which enters into a contract or agreement with the director of the budget which otherwise provides for cost recovery to the state under this section and includes a provision that, in accordance with this subdivision, subdivisions one and two of this section shall not apply to such public benefit corporation. The circumstances for the entry into such contract or agreement may include, but shall not be limited to, those where the amount to be paid thereunder equals or exceeds the amount of the bond issuance charge, which would otherwise be applicable pursuant to subdivisions one and two of this section.

4. *[Repealed by L.2002, c. 85, pt. X, § 2, eff. May 29, 2002]*

#### **§ 2976-a. Fees in connection with certain health care facility financings**

1. In connection with the issuance of bonds, notes, or other obligations issued by public benefit corporations (which for purposes of this section shall include industrial development agencies created pursuant to title one of article eighteen-A of the general municipal law or any other provision of law) to finance the cost of a project approved by the commissioner of health for which reimbursement is provided pursuant to article twenty-eight of the public health law, the commissioner of health shall charge a fee of nine tenths of one percent of the original principal amount of the bonds or other obligations issued for such purpose. Such fee shall be payable by the entity that owns or operates the facility to the state department of health upon the closing of such bonds or obligations.

2. In connection with the issuance of bonds, notes, or other obligations issued by a public benefit corporation to refund or refinance bonds or other obligations issued to finance the cost of a project approved by the commissioner of health for which reimbursement is provided pursuant to article twenty-eight of the public health law, the commissioner of health shall charge a fee of five tenths of one percent of the original principal amount of the bonds or other obligations issued for such purpose. Such fee shall be payable by the entity that owns or operates the facility to the state department of health upon the closing of such bonds or obligations.

3. The fees and charges paid by a non-profit hospital corporation, non-profit corporation providing a residential health care facility or non-profit medical corporation pursuant to subdivisions one and two of this section shall be deemed allowable capital costs in the determination of reimbursement rates established pursuant to article twenty-eight of the public health law. The cost of such fees and charges shall not be subject to reimbursement ceilings or other penalties used by the commissioner of health for the purpose of establishing reimbursement rates pursuant to article twenty-eight of the public health law.

#### **§ 2977. Applicability of title**

1. The provisions of this title shall not be construed to, nor shall they be implemented in such a manner as to:

(a) require the application of monies pledged to the security of bonds, notes or other obligations in violation of applicable bond covenants; or

(b) otherwise impair the rights of bondholders of the public benefit corporations affected by this title.

2. To the extent precluded by interstate or international compact, which creates any public benefit corporation, the provisions of this title shall not apply to any such public benefit corporation until the passage of legislation, by the other party to such compact, which validates or has the same effect as this title.

## **TITLE 11: WRONGFUL DEATH ACTIONS**

### **§ 2980. Wrongful death; notice of claim**

No wrongful death action against a public authority or public benefit corporation shall be commenced unless a notice of claim has been served on the authority or corporation in accordance with the provisions of section fifty-e of the general municipal law.

### **§ 2981. Wrongful death; limitation period**

A wrongful death action against a public authority or public benefit corporation shall be commenced within two years of the happening of the death.

### **§ 2982. Scope of title**

Except where such an action is statutorily required to be brought only in the court of claims, this title shall be applicable to all wrongful death actions brought against a public authority or public benefit corporation, notwithstanding any inconsistent provisions of law, general, special or local, or any limitation contained in the provisions of any city charter.

### **§ 2985. Owner liability for failure of operator to comply with toll collection regulations**

1. Notwithstanding any other provision of law, every public authority which operates a toll highway bridge and/or tunnel facility is hereby authorized and empowered to impose monetary liability on the owner of a vehicle for failure of an operator thereof to comply with the toll collection regulations of such public authority in accordance with the provisions of this section.

2. The owner of a vehicle shall be liable for a civil penalty imposed pursuant to this section if such vehicle was used or operated with the permission of the owner, express or implied, in violation of toll collection regulations, and such violation is evidenced by information obtained from a photo-monitoring system, provided, however, that no owner of a vehicle shall be liable for a penalty imposed pursuant to this section where the operator of such vehicle has been convicted of a violation of toll collection regulations for the same incident.

3. For purposes of this section, the term “owner” shall mean any person, corporation, partnership, firm, agency, association, lessor or organization who, at the time of the violation and with respect to the vehicle identified in the notice of liability: (a) is the beneficial or equitable owner of such vehicle; or (b) has title to such vehicle; or (c) is the registrant or co-registrant of such vehicle which is registered with the department of motor vehicles of this state or any other state, territory, district, province, nation or other jurisdiction; or (d) subject to the limitations set forth in subdivision ten of this section, uses such vehicle in its vehicle renting and/or leasing business; and includes (e) a person entitled to the use and possession of a vehicle subject to a security interest in another person. For purposes of this section, the term “photo-monitoring system” shall mean a vehicle sensor installed to work in conjunction with a toll collection facility, which automatically produces one or more photographs, one or more microphotographs, a videotape or other recorded images of each vehicle at the time it is used or operated in violation of toll collection regulations. For purposes of this section, the term “toll collection regulations” shall mean: those rules and regulations of a public authority providing for and requiring the payment of tolls and/or charges prescribed by such public authority for the use of bridges, tunnels or highways under its jurisdiction or those rules and regulations of a public authority making it unlawful to refuse to pay or to evade or to attempt to evade the payment of all or part of any toll and/or charge for the use of bridges, tunnels or highways under the jurisdiction of such public authority. For purposes of this section, the term “vehicle” shall mean every device in, upon or by which a person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

4. A certificate, sworn to or affirmed by an agent of the public authority which charged that the violation occurred, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a photo-monitoring system shall be prima facie evidence of the facts contained therein and shall be admissible in any proceeding charging a violation of toll collection regulations, provided that any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection and admission into evidence in any proceeding to adjudicate the liability for such violation.

5. An owner found liable for a violation of toll collection regulations pursuant to this section shall for a first violation thereof be liable for a monetary penalty not to exceed fifty dollars or two times the toll evaded whichever is greater; for a second violation thereof both within eighteen months be liable for a monetary penalty not to exceed one hundred dollars or five times the toll evaded whichever is greater; for a third or subsequent violation thereof all within eighteen months be liable for a monetary penalty not to exceed one hundred fifty dollars or ten times the toll evaded whichever is greater.

6. An imposition of liability pursuant to this section shall be based upon a preponderance of evidence as submitted. An imposition of liability pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the motor vehicle operating record, furnished pursuant to section three hundred fifty-four of the vehicle and traffic law, of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the

provision of motor vehicle insurance coverage.

7. (a) A notice of liability shall be sent by first class mail to each person alleged to be liable as an owner for a violation of toll collection regulations. Such notice shall be mailed no later than thirty days after the alleged violation. Personal delivery on the owner shall not be required. A manual or automatic record of mailing prepared in the ordinary course of business shall be prima facie evidence of the mailing of the notice.

(b) A notice of liability shall contain the name and address of the person alleged to be liable as an owner for a violation of toll collection regulations pursuant to this section, the registration number of the vehicle involved in such violation, the location where such violation took place, the date and time of such violation and the identification number of the photo-monitoring system which recorded the violation or other document locator number.

(c) The notice of liability shall contain information advising the person charged of the manner and the time in which he may contest the liability alleged in the notice. Such notice of liability shall also contain a warning to advise the persons charged that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon.

(d) The notice of liability shall be prepared and mailed by the public authority having jurisdiction over the toll facility where the violation of toll collection regulations occurred.

8. Adjudication of the liability imposed upon owners by this section shall be by the entity having jurisdiction over violations of the rules and regulations of the public authority serving the notice of liability or where authorized by an administrative tribunal and all violations shall be heard and determined in the county in which the violation is alleged to have occurred, or in New York city and upon the consent of both parties, in any county within New York city in which the public authority operates or maintains a facility, and in the same manner as charges of other regulatory violations of such public authority or pursuant to the rules and regulations of such administrative tribunal as the case may be.

9. If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle was reported to the police department as having been stolen, it shall be a valid defense to an allegation of liability for a violation of toll collection regulations that the vehicle had been reported to the police as stolen prior to the time the violation occurred and had not been recovered by such time. If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle was stolen, but not as yet reported to the police as having been stolen, it shall be a valid defense to an allegation of liability for a violation of toll collection regulations pursuant to this section that the vehicle was reported as stolen within two hours after the discovery of the theft by the owner. For purposes of asserting the defense provided by this subdivision it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail to the court or other entity having jurisdiction.

10. An owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to subdivision seven of this section shall not be liable for the violation of the toll collection regulation provided that he or she sends to the public authority serving the notice of liability and to the court or other entity having jurisdiction a copy of the rental, lease or other such contract document covering such vehicle on the date of the violation, with the name and address of the lessee clearly legible, within thirty days after receiving the original notice of liability. Failure to send such information within such thirty day time period shall render the lessor liable for the penalty prescribed by this section. Where the lessor complies with the provisions of this subdivision, the lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this section and shall be subject to liability for the violation of toll collection regulations, provided that the public authority mails a notice of liability to the lessee within ten days after the court, or other entity having jurisdiction, deems the lessee to be the owner. For purposes of this subdivision the term "lessor" shall mean any person, corporation, firm, partnership, agency, association or organization engaged in the business of renting or leasing vehicles to any lessee under a rental agreement, lease or otherwise wherein the said lessee has the exclusive use of said vehicle for any period of time. For purposes of this subdivision, the term "lessee" shall mean any person, corporation, firm, partnership, agency, association or organization that rents, leases or contracts for the use of one or more vehicles and has exclusive use thereof for any period of time.

11. Except as provided in subdivision ten of this section, if a person receives a notice of liability pursuant to this section it shall be a valid defense to an allegation of liability for a violation of toll collection regulations that the individual who received the notice of liability pursuant to this section was not the owner of the vehicle at the time the violation occurred. If the owner liable for a violation of toll collection regulations pursuant to this section was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

12. "Electronic toll collection system" shall mean a system of collecting tolls or charges which is capable of charging an account holder the appropriate toll or charge by transmission of information from an electronic device on a motor vehicle to the toll lane, which information is used to charge the account the appropriate toll or charge. In adopting procedures for the preparation and mailing of a notice of liability, the public authority having jurisdiction over the toll facility shall adopt guidelines to ensure adequate and timely notice to all electronic toll collection system account holders to inform them when their accounts are delinquent. An owner who is an account holder under the electronic toll collection system shall not be found liable for a violation of this section unless such authority has first sent a notice of delinquency to such account holder and the account holder was in fact delinquent at the time of the violation.

13. Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of toll collection regulations.

14. Notwithstanding any other provision of law, all photographs, microphotographs, videotape or other recorded images prepared pursuant to this section shall be for the exclusive use of a public authority in the discharge of its duties under this section and shall not be open to the

public nor be used in any court in any action or proceeding pending therein unless such action or proceeding relates to the imposition of or indemnification for liability pursuant to this section. The public authority shall not sell, distribute or make available in any way, the names and addresses of electronic toll collection system account holders, without such account holders' consent to any entity that will use such information for any commercial purpose provided that the foregoing restriction shall not be deemed to preclude the exchange of such information between any entities with jurisdiction over and or operating a toll highway bridge and/or tunnel facility.



**APPENDIX C**

**ARTICLE 18  
CONFLICTS OF INTEREST**

**§ 800. Definitions**

When used in this article and unless otherwise expressly stated or unless the context otherwise requires:

1. “Chief fiscal officer” means a comptroller, commissioner of finance, director of finance or other officer possessing similar powers and duties, except that in a school district the term shall not mean a member of the board of education or a trustee thereof.
2. “Contract” means any claim, account or demand against or agreement with a municipality, express or implied, and shall include the designation of a depository of public funds and the designation of a newspaper, including but not limited to an official newspaper, for the publication of any notice, resolution, ordinance, or other proceeding where such publication is required or authorized by law.
3. “Interest” means a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves. For the purposes of this article a municipal officer or employee shall be deemed to have an interest in the contract of (a) his spouse, minor children and dependents, except a contract of employment with the municipality which such officer or employee serves, (b) a firm, partnership or association of which such officer or employee is a member or employee, (c) a corporation of which such officer or employee is an officer, director or employee and (d) a corporation any stock of which is owned or controlled directly or indirectly by such officer or employee.
4. “Municipality” means a county, city, town, village, school district, consolidated health district, county vocational education and extension board, public library, board of cooperative educational services, urban renewal agency, a joint water works system established pursuant to chapter six hundred fifty-four of the laws of nineteen hundred twenty-seven, or a town or county improvement district, district corporation, or other district or a joint service established for the purpose of carrying on, performing or financing one or more improvements or services intended to benefit the health, welfare, safety or convenience of the inhabitants of such governmental units or to benefit the real property within such units, an industrial development agency but shall have no application to a city having a population of one million or more or to a county, school district, or other public agency or facility therein.

5. "Municipal officer or employee" means an officer or employee of a municipality, whether paid or unpaid, including members of any administrative board, commission or other agency thereof and in the case of a county, shall be deemed to also include any officer or employee paid from county funds. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer firefighter or civil defense volunteer, except a fire chief or assistant fire chief.

6. "Treasurer" means a county treasurer, city treasurer, town supervisor, village treasurer, school district treasurer, fire district treasurer, improvement district treasurer, president of a board of health of a consolidated health district, county vocational educational and extension board treasurer, treasurer of a board of cooperative educational services, public general hospital treasurer, or other officer possessing similar powers and duties.

### **§ 801. Conflicts of interest prohibited**

Except as provided in section eight hundred two of this chapter, (1) no municipal officer or employee shall have an interest in any contract with the municipality of which he is an officer or employee, when such officer or employee, individually or as a member of a board, has the power or duty to (a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder (b) audit bills or claims under the contract, or (c) appoint an officer or employee who has any of the powers or duties set forth above and (2) no chief fiscal officer, treasurer, or his deputy or employee, shall have an interest in a bank or trust company designated as a depository, paying agent, registration agent or for investment of funds of the municipality of which he is an officer or employee. The provisions of this section shall in no event be construed to preclude the payment of lawful compensation and necessary expenses of any municipal officer or employee in one or more positions of public employment, the holding of which is not prohibited by law.

### **§ 802. Exceptions**

The provisions of section eight hundred one of this chapter shall not apply to:

1. a. The designation of a bank or trust company as a depository, paying agent, registration agent or for investment of funds of a municipality except when the chief fiscal officer, treasurer, or his deputy or employee, has an interest in such bank or trust company; provided, however, that where designation of a bank or trust company outside the municipality would be required because of the foregoing restriction, a bank or trust company within the municipality may nevertheless be so designated;

b. A contract with a person, firm, corporation or association in which a municipal officer or employee has an interest which is prohibited solely by reason of employment as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such contract and the duties of such employment do not directly involve the procurement, preparation or performance of any part of such contract;

c. The designation of a newspaper, including but not limited to an official newspaper, for the

publication of any notice, resolution, ordinance or other proceeding where such publication is required or authorized by law;

d. The purchase by a municipality of real property or an interest therein, provided the purchase and the consideration therefor is approved by order of the supreme court upon petition of the governing board;

e. The acquisition of real property or an interest therein, through condemnation proceedings according to law;

f. A contract with a membership corporation or other voluntary non-profit corporation or association;

g. The sale of bonds and notes pursuant to section 60.10 of the local finance law;

h. A contract in which a municipal officer or employee has an interest if such contract was entered into prior to the time he was elected or appointed as such officer or employee, but this paragraph shall in no event authorize a renewal of any such contract;

i. Employment of a duly licensed physician as school physician for a school district upon authorization by a two-thirds vote of the board of education of such school district, notwithstanding the fact that such physician shall have an interest, as defined in section eight hundred one of this chapter, in such employment.

j. Purchases or public work by a municipality, other than a county, located wholly or partly within a county with a population of two hundred thousand or less pursuant to a contract in which a member of the governing body or board has a prohibited interest, where:

(1) the member of the governing body or board is elected and serves without salary;

(2) the purchases, in the aggregate, are less than five thousand dollars in one fiscal year and the governing body or board has followed its procurement policies and procedures adopted in accordance with the provisions of section one hundred four-b of this chapter and the procurement process indicates that the contract is with the lowest dollar offer;

(3) the contract for the purchases or public work is approved by resolution of the body or board by the affirmative vote of each member of the body or board except the interested member who shall abstain.

2. a. A contract with a corporation in which a municipal officer or employee has an interest by reason of stockholdings when less than five per centum of the outstanding stock of the corporation is owned or controlled directly or indirectly by such officer or employee;

b. A contract for the furnishing of public utility services when the rates or charges therefor are fixed or regulated by the public service commission;

c. A contract for the payment of a reasonable rental of a room or rooms owned or leased by an officer or employee when the same are used in the performance of his official duties and are so designated as an office or chamber;

d. A contract for the payment of a portion of the compensation of a private employee of an officer when such employee performs part time service in the official duties of the office;

e. A contract in which a municipal officer or employee has an interest if the total consideration payable thereunder, when added to the aggregate amount of all consideration payable under contracts in which such person had an interest during the fiscal year, does not exceed the sum of seven hundred fifty dollars.

f. A contract with a member of a private industry council established in accordance with the federal job training partnership act [FN1] or any firm, corporation or association in which such member holds an interest, provided the member discloses such interest to the council and the member does not vote on the contract.

### **§ 803. Disclosure of interest**

1. Any municipal officer or employee who has, will have, or later acquires an interest in or whose spouse has, will have, or later acquires an interest in any actual or proposed contract, purchase agreement, lease agreement or other agreement, including oral agreements, with the municipality of which he or she is an officer or employee, shall publicly disclose the nature and extent of such interest in writing to his or her immediate supervisor and to the governing body thereof as soon as he or she has knowledge of such actual or prospective interest. Such written disclosure shall be made part of and set forth in the official record of the proceedings of such body.

2. Notwithstanding the provisions of subdivision one of this section, disclosure shall not be required in the case of an interest in a contract described in subdivision two of section eight hundred two hereof.

### **§ 804. Contracts void**

Any contract willfully entered into by or with a municipality in which there is an interest prohibited by this article shall be null, void and wholly unenforceable.

#### **804-a. Certain interests prohibited**

No member of the governing board, of a municipality shall have any interest in the development or operation of any real property located within Nassau County and developed or operated by any membership corporation originally formed for purposes among which are the following:

1. to plan for, advise, recommend, promote and in all ways encourage, alone or in concert with public officials and bodies and interested local associations, the development and establishment of any lands in Nassau County publicly [FN1] owned with particular emphasis on industrial, business, commercial, residential and public uses, the augmentation [FN1] of public revenues and furtherance of the public interest of the citizens of Nassau County;
2. to conduct studies to ascertain the needs of Nassau County as pertains to such publicly [FN1] owned lands and supporting facilities and in Nassau County generally for the purpose of aiding the County of Nassau in attracting new business, commerce and industry to it and in encouraging the development and retention of business, commerce and industry;
3. to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities and instruct or train individuals to improve or develop their capabilities for such jobs;
4. to implement and engage itself in plans of development of such publicly [FN1] owned lands and other areas in connection with private companies and citizens and with public bodies and officials, and to participate in such operations, leaseholds, loans, ownerships with respect to land, buildings or public facilities or interest therein as may be lawful and desirable to effectuate its corporate purposes and the best interests of the people of Nassau County.

#### **§ 805. Violations**

Any municipal officer or employee who willfully and knowingly violates the foregoing provisions of this article shall be guilty of a misdemeanor.

#### **§ 805-a. Certain action prohibited**

1. No municipal officer or employee shall: a. directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part;
- b. disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interests;
- c. receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee; or
- d. receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his municipality, whereby his

compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

2. In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate this section may be fined, suspended or removed from office or employment in the manner provided by law.

#### **§ 805-b. Solemnization of marriages**

Notwithstanding any statute, law or rule to the contrary, no public officer listed in section eleven of the domestic relations law shall be prohibited from accepting any fee or compensation having a value of one hundred dollars or less, whether in the form of money, property, services or entertainment, for the solemnization of a marriage by such public officer at a time and place other than the public officer's normal public place of business, during normal hours of business. For the purpose of this section, a town or village judge's normal hours of business shall mean those hours only which are officially scheduled by the court for the performing of the judicial function.

#### **§ 806. Code of ethics**

1. (a) The governing body of each county, city, town, village, school district and fire district shall and the governing body of any other municipality may by local law, ordinance or resolution adopt a code of ethics setting forth for the guidance of its officers and employees the standards of conduct reasonably expected of them. Notwithstanding any other provision of this article to the contrary, a fire district code of ethics shall also apply to the volunteer members of the fire district fire department. Codes of ethics shall provide standards for officers and employees with respect to disclosure of interest in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, future employment and such other standards relating to the conduct of officers and employees as may be deemed advisable. Such codes may regulate or prescribe conduct, which is not expressly prohibited by this article but may not authorize conduct otherwise prohibited. Such codes may provide for the prohibition of conduct or disclosure of information and the classification of employees or officers.

(b) Effective on and after January first, nineteen hundred ninety-one, such codes of political subdivisions, as defined in section eight hundred ten of this article, may contain provisions which require the filing of completed annual statements of financial disclosure with the appropriate body, as defined in section eight hundred ten of this article. Nothing herein shall be construed to restrict any political subdivision or any other municipality from requiring such a filing prior to January first, nineteen hundred ninety-one. Other than as required by subdivision two of section eight hundred eleven of this article, the governing body of any such political subdivision or other municipality may at any time subsequent to the effective date of this paragraph, adopt a local law, ordinance or resolution pursuant to subdivision one of section eight hundred eleven of this article and any such political subdivision or municipality, acting by

its governing body, may take such other action as is authorized in such subdivision. Any political subdivision or other municipality to which all of the provisions of section eight hundred twelve of this article apply may elect to remove itself from the ambit of all (but not some) provisions of such section in the manner authorized in subdivision three of such section eight hundred twelve. In such event any such political subdivision or municipality shall be subject to certain conditions and limitations set forth in paragraphs (a), (b) and (c) of such subdivision three which shall include, but not be limited to, the promulgation of a form of an annual statement of financial disclosure described in subdivision one of such section eight hundred eleven.

2. The chief executive officer of a municipality adopting a code of ethics shall cause a copy thereof to be distributed to every officer and employee of his municipality. The fire district commissioners shall cause a copy of the fire district's code of ethics to be posted publicly and conspicuously in each building under such district's control. Failure to distribute any such copy or failure of any officer or employee to receive such copy shall have no effect on the duty of compliance with such code, nor the enforcement of provisions thereof.

3. Until January first, nineteen hundred ninety-one, the clerk of each municipality shall file in the office of the state comptroller and on or after January first, nineteen hundred ninety-one, the clerk of each municipality and of each political subdivision, as defined in section eight hundred ten of this article, shall file with the temporary state commission on local government ethics established by section eight hundred thirteen of this article, if such temporary state commission be in existence, and in all events shall maintain as a record subject to public inspection:

(a) a copy of any code of ethics or any amendments to any code of ethics adopted within thirty days after the adoption of such code or such amendment,

(b) a statement that such municipality or political subdivision has established a board of ethics, in accordance with section eight hundred eight and/or pursuant to other law, charter, code, local law, ordinance or resolution, and the composition of such board, within thirty days after the establishment of such board.

(c) a copy of the form of annual statement of financial disclosure described in subdivision one of section eight hundred eleven of this article and either a statement of the date such annual statement form was promulgated by local law, ordinance or resolution of the governing body, if adopted pursuant to subparagraph (i) of paragraph (a) of subdivision one of section eight hundred eleven of this article, or a statement that the governing body has, by local law, ordinance or resolution, resolved to continue the use of an authorized form of annual statement of financial disclosure in use on the date such local law, ordinance or resolution is adopted, if adopted pursuant to subparagraph (ii) of paragraph (a) of subdivision one of section eight hundred eleven of this article, and if as of January first, nineteen hundred ninety-one, no such form was promulgated and no such resolve was made to continue using an existing annual statement form, a statement that the provisions of section eight hundred twelve of this article apply or that it is a municipality which is not subject to the provisions of section eight hundred twelve of this article because it is not a political subdivision as defined in section eight hundred

ten of this article.

(d) on or before the fifteenth day of February in each year, the comptroller or the temporary state commission on local government ethics if such commission be in existence, or the clerk of the municipality or political subdivision during or after calendar year nineteen hundred ninety-one if such commission not be in existence, as the case may be, shall submit to the legislature a report listing the name of each county, city, town, village and school district which has as of the thirty-first day of December next preceding, failed to so file with him or with it, as the case may be, a code of ethics, or in the case of a filing by the clerk of the municipality or political subdivision, stating whether or not the municipality or political subdivision has in effect as of the filing date, a code of ethics.

(e) not later than April first, nineteen hundred ninety-one, the comptroller shall submit to the temporary state commission on local government ethics:

(i) a report that sets forth, (A) the name of each political subdivision, as such term is defined in section eight hundred ten of this article, the governing body of which has elected to satisfy the requirements of subdivision one of section eight hundred eleven of this article by continuing to use the annual statement form in existence at the time such election is made as authorized by subdivision one of section eight hundred eleven of this article, and (B) the name of each political subdivision, as so defined, other than those listed in clause (A) of this subparagraph (i), that timely promulgated an annual statement form of financial disclosure in accordance with subdivision one of section eight hundred eleven of this article, and (C) in a separate category, sets forth the name of those political subdivisions that failed to continue using its existing form or to promulgate a form and which, therefore, by operation of subdivision two of section eight hundred eleven of this article have become subject, as of January first, nineteen hundred ninety-one, to the provisions of section eight hundred twelve of this article. The comptroller shall, at the same time such report is submitted to the temporary state commission on local government ethics, notify each political subdivision which is contained in the latter category that it is subject to section eight hundred twelve of this article; and

(ii) a copy of the most recent filing by all municipalities and political subdivisions, made pursuant to paragraphs (a), (b), (c) and (d) of this subdivision.

### **§ 807. Posting of statute**

The chief executive officer of each municipality shall cause a copy of sections eight hundred through eight hundred nine of this article to be kept posted in each public building under the jurisdiction of his or her municipality in a place conspicuous to its officers and employees. Failure to post any such copy shall have no effect on the duty of compliance with this article, nor with the enforcement of the provisions thereof.

### **§ 808. Boards of ethics**

1. The governing body of any county may establish a county board of ethics and appropriate



moneys for maintenance and personal services in connection therewith. The members of such board of ethics shall be appointed by such governing body except in the case of a county operating under an optional or alternative form of county government or county charter, in which case the members shall be appointed by the county executive or county manager, as the case may be, subject to confirmation by such governing body. Such board of ethics shall consist of at least three members, a majority of whom shall not be officers or employees of such county or municipalities wholly or partially located in such county and at least one of whom shall be an elected or appointed officer or employee of the county or a municipality located within such county. The members of such board shall receive no salary or compensation for their services as members of such board and shall serve at the pleasure of the appointing authority.

2. The board shall render advisory opinions to officers and employees of municipalities wholly or partly within the county with respect to this article and any code of ethics adopted pursuant hereto. Such advisory opinions shall be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the board may prescribe and shall have the advice of counsel employed by the board, or if none, the county attorney. In addition, it may make recommendations with respect to the drafting and adoption of a code of ethics or amendments thereto upon the request of the governing body of any municipality in the county.

3. The governing body of any municipality other than a county may establish a local board of ethics and, where such governing body is so authorized, appropriate moneys for maintenance and personal services in connection therewith. A local board shall have all the powers and duties of and shall be governed by the same conditions as a county board of ethics, except that it shall act only with respect to officers and employees of the municipality that has established such board or of its agencies. The members of a local board shall be appointed by such person or body as may be designated by the governing body of the municipality to serve at the pleasure of the appointing authority and such board shall consist of at least three members, a majority of whom are not otherwise officers or employees of such municipality. Such board shall include at least one member who is an elected or appointed municipal officer or employee.

4. The county board of ethics shall not act with respect to the officers and employees of any municipality located within such county or agency thereof, where such municipality has established its own board of ethics, except that the local board may at its option refer matters to the county board.

5. A board of ethics of a political subdivision (as defined in section eight hundred ten of this article) and of any other municipality, which is required by local law, ordinance or resolution to be, or which pursuant to legal authority, in practice is, the repository for completed annual statements of financial disclosure shall notify the temporary state commission on local government ethics if such commission be in existence and if not, shall file a statement with the clerk of its municipality, that it is the authorized repository for completed annual statements of financial disclosure and that on account thereof, such completed statements will be filed with it and not with the commission. Should any local law, ordinance or resolution be adopted which provides for the filing of such completed annual statements with the temporary state commission on local government ethics instead of with such board of ethics, such board of ethics shall notify the temporary state commission on local government ethics of that fact.

## **§ 809. Disclosure in certain applications**

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provisions of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state officer or any officer or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.

2. For the purpose of this section an officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them

(a) is the applicant, or

(b) is an officer, director, partner or employee of the applicant, or

(c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or

(d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such application, petition or request.

3. In the county of Nassau the provisions of subdivisions one and two of this section shall also apply to a party officer. "Party officer" shall mean any person holding any position or office, whether by election, appointment or otherwise, in any party as defined by subdivision four of section two of the election law. [FN1]

4. Ownership of less than five per cent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.

5. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

## **§ 810. Additional definitions**

As used in sections eight hundred eleven, eight hundred twelve and eight hundred thirteen of this article:

1. The term "political subdivision" shall mean a county, city, town or village having a

population of fifty thousand or more and shall include a city with a population of one million or more.

2. The term “local elected official” shall mean an elected official of the political subdivision, except judges or justices of the unified court system.

3. The term “local officer or employee” shall mean the heads (other than local elected officials) of any agency, department, division, council, board, commission, or bureau of a political subdivision and their deputies and assistants, and the officers and employees of such agencies, departments, divisions, boards, bureaus, commissions or councils who hold policy-making positions, as annually determined by the appointing authority and set forth in a written instrument which shall be filed with the appropriate body during the month of February; except that the term “local officer or employee” shall not mean a judge, justice, officer or employee of the unified court system. Members, officers and employees of each industrial development agency and authority shall be deemed officers or employees of the county, city, village or town for whose benefit such agency or authority is established.

4. The term “state agency” shall mean any state department, or division, board, commission, or bureau of any state department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the governor, or the state university of New York or the city university of New York, including all their constituent units except community colleges and the independent institutions operating statutory or contract colleges on behalf of the state.

5. The term “spouse” shall mean the husband or wife of the reporting individual unless living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation or unless separated pursuant to: (a) a judicial order, decree or judgment, or (b) a legally binding separation agreement.

6. The term “local political party official” shall mean:

(a) any chairman of a county committee elected pursuant to section 2-112 of the election law, or his or her successor in office, who received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more;

(b) that person (usually designated by the rules of a county committee as the “county leader” or “chairman of the executive committee”) by whatever title designated, who pursuant to the rules of a county committee or in actual practice, possesses or performs any or all of the following duties or roles, provided that such person received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more:

(i) the principal political, executive and administrative officer of the county committee;

(ii) the power of general management over the affairs of the county committee;

(iii) the power to exercise the powers of the chairman of the county committee as provided for in the rules of the county committee;

(iv) the power to preside at all meetings of the county executive committee, if such a committee is created by the rules of the county committee or exists de facto, or any other committee or subcommittee of the county committee vested by such rules with or having de facto the power of general management over the affairs of the county committee at times when the county committee is not in actual session;

(v) the power to call a meeting of the county committee or of any committee or subcommittee vested with the rights, powers, duties or privileges of the county committee pursuant to the rules of the county committee, for the purpose of filling an office at a special election in accordance with section 6-114 of the election law, for the purpose of filling a vacancy in accordance with section 6-116 of such law or for the purpose of filling a vacancy or vacancies in the county committee which exist by reason of an increase in the number of election districts within the county occasioned by a change of the boundaries of one or more election districts, taking effect after the election of its members, or for the purpose of determining the districts that the elected members shall represent until the next election at which such members of such committee are elected; provided, however, that in no event shall such power encompass the power of a chairperson of an assembly district committee or other district committee smaller than a county and created by the rules of the county committee, to call a meeting of such district committee for such purpose;

(vi) the power to direct the treasurer of the party to expend funds of the county committee; or

(vii) the power to procure from one or more bank accounts of the county committee the necessary funds to defray the expenses of the county committee; and

(c) the city, town or village chairman or leader of a city, town or village committee of a party as the term party is defined in section 1-104 of the election law, but only with respect to a city, town or village having a population of fifty thousand or more, and only if such chairman or leader received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more. The term chairperson or leader is intended to refer to the person who performs the functions and duties of the chief official of a party in the city, town or village by whatever title designated.

The terms "constituted committee" and "political committee", as used in this subdivision six, shall have the same meanings as those contained in section 14-100 of the election law.

7. The term "relative" shall mean such individual's spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of the reporting individual or of the reporting individual's spouse.

8. The term “unemancipated child” shall mean any son, daughter, stepson or stepdaughter who is under age eighteen, unmarried and living in the household of the reporting individual.

9. The term “appropriate body” or “appropriate bodies” shall mean:

(a) in the case of any political subdivision which has created or hereafter creates a board of ethics which is in existence at the time an annual statement of financial disclosure is due, and which has been designated by local law, ordinance or resolution to be the repository for such completed statements, such board of ethics;

(b) in the case of any political subdivision which has created or hereafter creates a board of ethics which is in existence at the time an annual statement of financial disclosure is due, and which has not been designated by local law, ordinance or resolution to be the repository for such completed statements, the temporary state commission on local government ethics;

(c) in the case of any political subdivision for which no board of ethics is in existence at the time an annual statement of financial disclosure is due, the temporary state commission on local government ethics.

10. The term “regulatory agency” shall have the same meaning as ascribed to such term by subdivision one of section seventy-three of the public officers’ law.

11. The term “ministerial matter” shall have the same meaning as ascribed to such term by subdivision one of section seventy-three of the public officers’ law.

12. The term “local agency” shall mean:

(a) any county, city, town, village, school district or district corporation, or any agency, department, division, board, commission or bureau thereof; and

(b) any public benefit corporation or public authority not included in the definition of a state agency.

**§ 811. Promulgation of form of annual statement of financial disclosure; authority of governing body with respect to persons subject thereto**

1. (a) The governing body of each political subdivision may, not later than January first, nineteen hundred ninety-one, and the governing body of any other municipality may at any time subsequent to the effective date of this section, adopt a local law, ordinance, or resolution:

(i) wherein it promulgates a form of annual statement of financial disclosure which is designed to assure disclosure by municipal officers and employees, which for the purposes of this section, the definition for which shall be modified so as to also include a city with a population of one million or more, and (in the case of a political subdivision or any other county, city, town or village) which is designed to assure disclosure by local elected officials and/or by local political

party officials of such financial information as is determined necessary by the governing body, or (ii) wherein it resolves to continue the use of an authorized form of annual statement of financial disclosure in use on the date such local law, ordinance or resolution is adopted. In either event, such local law, ordinance or resolution if and when adopted shall specify by name of office or by title or classification those municipal officers and employees and (in the case of a political subdivision or any other county, city, town or village) those local elected officials and/or those local political party officials which shall be required to complete and file such annual statement.

(a-1) In a city with a population of one million or more, such local law, ordinance or resolution shall require, on two or more types of forms for annual statements of financial disclosure, disclosure of information that could reveal potential conflicts of interest as defined by chapter sixty-eight of the New York city charter.

(i) The disclosure required by such law, ordinance or resolution of such city shall, at a minimum, include information about any non-city employment or interests that may give rise to a conflict of interest, including, but not limited to, interests of the filer and his or her spouse or registered domestic partner, and unemancipated children, in: (A) real property located in such city, and (B) positions or business dealings with, financial interests in, or gifts from, any persons or firms or entities engaged in business dealings with such city.

(ii) In any such city, local elected officials and compensated local officers and employees, as defined in subdivisions two and three, respectively, of section eight hundred ten of this article, shall, at a minimum, disclose in addition to the information required by subparagraph (i) of this paragraph: (A) interests in a firm where the value of the interest is ten thousand dollars or more; (B) where the official, officer, or employee holds a policy-making position with such city, membership in the national or state committee of a political party or service as assembly district leader of a political party or service as the chair or as an officer of the county committee or county executive committee of a political party; (C) the names and positions of any spouse or registered domestic partner, child, stepchild, brother, sister, parent or stepparent holding a position with any such city; (D) each volunteer office or position held by the filer or his or her spouse or registered domestic partner with any not-for-profit organization engaged in business dealings with such city, except where the person volunteers only in a non-policy-making, non-administrative capacity; and (E) agreements between the filer and any person or firm or entity engaged in business dealings with such city for future payment to or employment of the filer.

(iii) For purposes of this paragraph, the term "firm" shall have the same meaning as set forth in subdivision eleven of section twenty-six hundred one of the New York city charter.

(b) The governing body of a political subdivision or any other county, city, town or village, which requires the completion and filing of either of such forms of annual statements of financial disclosure by local or municipal officers and employees and/or by local elected officials shall have the power, if it so chooses, to require the completion and filing of such annual statements of financial disclosure by local political party officials as if such officials were officers or employees of such county, city, town or village, provided however, that a person

who is subject to the filing requirements of both subdivision two of section seventy-three-a of the public officers law and of this subdivision may satisfy the requirements of this subdivision by filing a copy of the statement filed pursuant to section seventy-three-a of the public officers law with the appropriate body, as defined in section eight hundred ten of this article, on or before the filing deadline provided in such section seventy-three-a, notwithstanding the filing deadline otherwise imposed by this subdivision.

(c) The governing body of a political subdivision or any other county, city, town or village which requires any local or municipal officer or employee or any local elected official or any local political party official to complete and file either of such annual statements of financial disclosure shall have, possess, exercise and enjoy all the rights, powers and privileges attendant thereto which are necessary and proper to the enforcement of such requirement, including but not limited to, the promulgation of rules and regulations pursuant to local law, ordinance or resolution, which rules or regulations may provide for the public availability of items of information to be contained on such form of statement of financial disclosure, the determination of penalties for violation of such rules or regulations, and such other powers as are conferred upon the temporary state commission on local government ethics pursuant to section eight hundred thirteen of this article as such local governing body determines are warranted under the circumstances existing in its county, city, town or village.

(d) The local law, ordinance or resolution, if and when adopted, shall provide for the annual filing of completed statements with either the temporary state commission on local government ethics or with the board of ethics of the political subdivision or other municipality and shall contain the procedure for filing such statements and the date by which such filing shall be required. If the board of ethics is designated as the appropriate body, then such local law, ordinance or resolution shall confer upon the board appropriate authority to enforce such filing requirement, including the authority to promulgate rules and regulations of the same import as those which the temporary state commission on local government ethics enjoys under section eight hundred thirteen of this article. Any such local law, ordinance or resolution shall authorize exceptions with respect to complying with timely filing of such disclosure statements due to justifiable cause or undue hardship. The appropriate body shall prescribe rules and regulations related to such exceptions with respect to extensions and additional periods of time within which to file such statement including the imposition of a time limitation upon such extensions.

(e) Nothing herein shall be construed to prohibit a political subdivision or other municipality from promulgating the form of annual financial disclosure statement set forth in section eight hundred twelve of this article. Promulgation of the same form of annual financial disclosure statement set forth in section eight hundred twelve of this article shall not be deemed an automatic election to be subject to the provisions of such section.

2. In the event that a political subdivision fails by January first, nineteen hundred ninety-one to promulgate, or fails by such date to elect to continue using, a form of annual statement of financial disclosure in the manner authorized in subdivision one of this section then the provisions of section eight hundred twelve of this article shall apply on and after such date to

any such political subdivision subject to the provisions of subdivision three of such section eight hundred twelve.

**§ 812. Financial disclosure for local elected officials and certain officers and employees of counties, cities, towns and villages**

1. (a) Any political subdivision or other county, city, town or village to which all of the provisions of this section are made applicable, whether as the result of the provisions contained in subdivision two of section eight hundred eleven of this article or as a result of an election to be subject to the provisions of this section as permitted by subdivision two of this section, shall require (i) each of its local elected officials and local officers and employees, (ii) each local political party official and (iii) each candidate for local elected official with respect to such political subdivision, to file an annual statement of financial disclosure containing the information and in the form set forth in subdivision five of this section except that disclosure requirements for assessors who are not covered by this article shall be governed by the requirements of section three hundred thirty-six of the real property tax law. Such statement shall be filed on or before the fifteenth day of May with respect to the preceding calendar year, except that:

(i) a person who is subject to the reporting requirements of this subdivision and who timely filed with the internal revenue service an application for automatic extension of time in which to file his or her individual income tax return for the immediately preceding calendar or fiscal year shall be required to file such financial disclosure statement on or before May fifteenth but may, without being subjected to any civil penalty on account of a deficient statement, indicate with respect to any item of the disclosure statement that information with respect thereto is lacking but will be supplied in a supplementary statement of financial disclosure, which shall be filed on or before the seventh day after the expiration of the period of such automatic extension of time within which to file such individual income tax return, provided that failure to file or to timely file such supplementary statement of financial disclosure or the filing of an incomplete or deficient supplementary statement of financial disclosure shall be subject to the notice and penalty provisions of this section respecting annual statements of financial disclosure as if such supplementary statement were an annual statement;

(ii) a person who is required to file an annual financial disclosure statement with the temporary state commission on local government ethics, and who is granted an additional period of time within which to file such statement due to justifiable cause or undue hardship, in accordance with required rules and regulations on the subject adopted pursuant to paragraph c of subdivision nine of section eight hundred thirteen of this article, shall file such statement within the additional period of time granted;

(iii) candidates for local elected official who file designating petitions for nomination at a primary election shall file such statement within seven days after the last day allowed by law for the filing of designating petitions naming them as candidates for the next succeeding primary election;



(iv) candidates for independent nomination for local elected official who have not been designated by a party to receive a nomination shall file such statement within seven days after the last day allowed by law for the filing of independent nominating petitions naming them as candidates for local elected official in the next succeeding general or special or village election; and

(v) candidates for local elected official who receive the nomination of a party for a special election or who receive the nomination of a party other than at a primary election (whether or not for an uncontested office) shall file such statement within seven days after the date of the meeting of the party committee at which they are nominated.

(b) As used in this subdivision, the terms “party”, “committee” (when used in conjunction [FN1] with the term “party”), “designation”, “primary”, “primary election”, “nomination”, “independent nomination”, “ballot” and “uncontested office” shall have the same meanings as those contained in section 1-104 of the election law.

(c) Such statement shall be filed with the appropriate body, as defined in section eight hundred ten of this article.

(d) The appropriate body, as defined in section eight hundred ten of this article, shall obtain from the “board of elections”, as such term is defined in section 1-104 of the election law, lists of all candidates for local elected official, and from such lists, shall determine and publish lists of those candidates who have not, within ten days after the required date for filing such statement, filed the statement required by this subdivision.

(e) Local political party officials and any person required to file such statement who commences employment after May fifteenth of any year shall file such statement within thirty days after commencing employment or of taking the position of local political party official, as the case may be.

(f) A person who is subject to the filing requirements of both subdivision two of section seventy-three-a of the public officers law and of this subdivision may satisfy the requirements of this subdivision by filing a copy of the statement filed pursuant to section seventy-three-a of the public officers law with the appropriate body, as defined in section eight hundred ten of this article, on or before the filing deadline provided in such section seventy-three-a, notwithstanding the filing deadline otherwise imposed by this subdivision.

(g) A person who is subject to the filing requirements of this subdivision from more than one political subdivision within the same county may satisfy the requirements of this subdivision by filing only one annual statement of financial disclosure with the appropriate body (as is required in that county) for the county in which such political subdivisions are located or if such political subdivisions cross one or more county boundary lines, then such single filing may be made for any of the counties in which one of such political subdivisions is located provided, however, that the appropriate bodies (as required by such other counties) are notified of the name of the county of such compliance by the person who is subjected to the filing

requirements of this subdivision, within the time limit for filing specified in this subdivision.

(h) A local elected official who is simultaneously a candidate for local elected official shall satisfy the filing deadline requirements of this subdivision by complying only with the deadline applicable to one who holds such local elected office.

(i) A candidate whose name will appear on both a party designating petition and on an independent nominating petition for the same office or who will be listed on the election ballot for the same office more than once shall satisfy the filing deadline requirements of this subdivision by complying with the earliest applicable deadline only.

2. The governing body of a county, city, town or village having a population of less than fifty thousand may by local law or ordinance elect to be subject to the provisions of this section. In such event, any such city, county, town or village shall be deemed to be a political subdivision under this section.

3. Any political subdivision or other county, city, town or village to which all of the provisions of this section are made applicable, whether as a result of the provisions contained in subdivision two of section eight hundred eleven of this article or as a result of an election to be subject to the provisions of this section as permitted by subdivision two of this section, may elect to remove itself from the ambit of all (but not some) provisions of this section (other than this subdivision) by adopting a local law, ordinance or resolution specifically referring to the authority conferred by this subdivision. Provided, however, that the terms of such local law, ordinance or resolution shall be subject to the following conditions and limitations:

(a) Such local law, ordinance or resolution must provide for the promulgation of a form of an annual statement of financial disclosure described in subdivision one of section eight hundred eleven of this article for use with respect to information the governing body requires to be reported for the calendar year next succeeding the year in which such local law, ordinance or resolution is adopted and for use with respect to information required to be reported for subsequent calendar years; and shall provide for the filing of completed statements with either the temporary state commission on local government ethics or with the board of ethics of the political subdivision or other municipality, as specified in subdivision one of section eight hundred eleven of this article.

(b) Such removal shall not be effective with respect to the annual financial disclosure statement for the calendar year in which the local law, ordinance or resolution is adopted (the filing of which statement is due on May fifteenth of the next succeeding year with certain exceptions), nor shall such removal be effective with respect to any required annual financial disclosure statement for the immediately preceding calendar year (the filing of which statement is due on May fifteenth (with certain exceptions) of the calendar year in which such local law, ordinance or resolution is adopted), nor shall such removal be effective with respect to any other preceding year but such removal shall apply first to the statement which would have been due on May fifteenth (with certain exceptions) of the second year next succeeding the year in which such local law, ordinance or resolution is adopted, and such removal shall apply thereafter to

subsequent statements otherwise due pursuant to this section.

(c) Such removal shall not affect the power to impose, or the imposition of, a penalty for failure to file, or for false filing, of any required annual financial disclosure statement.

(d) The local law, ordinance or resolution referred to in paragraph (a) of this subdivision or any other such local law, ordinance or resolution so adopted may make provision for any other right, power or privilege granted by subdivision one of such section eight hundred eleven.

4. Nothing contained in this section shall be construed as precluding the governing body of a political subdivision from requiring additional and/or more detailed items of financial disclosure than are set forth in subdivision five herein below.

5. The annual statement of financial disclosure shall contain the information and shall be in the form set forth herein below:

ANNUAL STATEMENT OF FINANCIAL DISCLOSURE FOR (Insert Name of Political Subdivision)--(For calendar year \_\_\_\_\_)

1. Name \_\_\_\_\_
2. (a) Title of Position \_\_\_\_\_  
(b) Department, Agency or other Governmental Entity \_\_\_\_\_  
(c) Address of Present Office \_\_\_\_\_  
(d) Office Telephone Number \_\_\_\_\_
3. (a) Marital Status \_\_\_\_\_. If married, please give spouse's full name including maiden name where applicable.  
\_\_\_\_\_  
(b) List the names of all unemancipated children.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Answer each of the following questions completely, with respect to calendar year \_\_\_\_\_, unless another period or date is otherwise specified. If additional space is needed, attach additional pages.

Whenever a "value" or "amount" is required to be reported herein, such value or amount shall be reported as being within one of the following Categories: Category A--under \$5,000; Category B--\$5,000 to under \$20,000; Category C--\$20,000 to under \$60,000; Category D--\$60,000 to under \$100,000; Category E--\$100,000 to under \$250,000; and Category F--\$250,000 or over. A reporting individual shall indicate the Category by letter only.

For the purposes of this statement, anywhere the term "local agency" shall appear such term

shall mean a local agency, as defined in section eight hundred ten of the general municipal law, of the political subdivision for which this financial disclosure statement has been filed.

4. (a) List any office, trusteeship, directorship, partnership, or position of any nature including honorary positions, if known, and excluding membership positions, whether compensated or not, held by the reporting individual with any firm, corporation, association, partnership, or other organization other than the State of New York or (insert name of political subdivision). If said entity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name of any such agency.

<u>Position</u>	<u>Organization</u>	<u>State or Local Agency</u>

- (b) List any office, trusteeship, directorship, partnership, or position of any nature including honorary positions, if known, and excluding membership positions, whether compensated or not, held by the spouse or unemancipated child of the reporting individual, with any firm, corporation, association, partnership, or other organization other than the State of New York. If said entity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name of any such agency.

<u>Position</u>	<u>Organization</u>	<u>State or Local Agency</u>

5. (a) List the name, address and description of any occupation, employment, trade, business or profession engaged in by the reporting individual. If such activity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name of any such agency.

<u>Position</u>	<u>Name &amp; Address of Organization</u>	<u>Description</u>	<u>State or Local Agency</u>

- 
- 
- (b) If the spouse or unemancipated child of the reporting individual was engaged in any occupation, employment, trade, business or profession which activity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name, address and description of such occupation, employment, trade, business or profession and the name of any such agency.

<u>Position</u>	<u>Name &amp; Address of Organization</u>	<u>Description</u>	<u>State or Local Agency</u>
-----------------	---	--------------------	------------------------------

---



---



---



---

6. st any interest, in excess of \$1,000, excluding bonds and notes, held by the reporting individual, such individual's spouse or unemancipated child, or partnership of which any such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled by any such person, whether vested or contingent, in any contract made or executed by a state or local agency and include the name of the entity which holds such interest and the relationship of the reporting individual or such individual's spouse or such child to such entity and the interest in such contract. Do not list any interest in any such contract on which final payment has been made and all obligations under the contract except from guarantees and warranties have been performed, provided, however, that such an interest must be listed if there has been an ongoing dispute during the calendar year for which this statement is filed with respect to any such guarantees or warranties. Do not list any interest in a contract made or executed by a state agency after public notice and pursuant to a process for competitive bidding or a process for competitive requests for proposals.

<u>Self, Spouse or Child</u>	<u>Entity Which Held Interest in Contract</u>	<u>Relationship to Entity and Interest in Contract</u>	<u>Contracting State or Local Agency</u>	<u>Category of Value of Contract</u>
------------------------------	---	--	--	--------------------------------------

---



---



---



---

7. st any position the reporting individual held as an officer of any political party or political organization, as a member of any political party committee, or as a political party district leader. The term "party" shall have the same meaning as "party" in the election law. The term "political organization" means any party or independent body as defined in the

election law or any organization that is affiliated with or a subsidiary of a party or independent body.

---

---

---

---

8. (a) If the reporting individual practices law, is licensed by the department of state as a real estate broker or agent or practices a profession licensed by the department of education, give a general description of the principal subject areas of matters undertaken by such individual. Additionally, if such an individual practices with a firm or corporation and is a partner or shareholder of the firm or corporation, give a general description of principal subject areas of matters undertaken by such firm or corporation. Do not list the name of the individual clients, customers or patients.

---

---

---

---

- (b) List the name, principal address and general description or the nature of the business activity of any entity in which the reporting individual or such individual's spouse had an investment in excess of \$1,000 excluding investments in securities and interests in real property.

---

---

---

---

9. List each source of gifts, excluding campaign contributions, in excess of \$1,000, received during the reporting period for which this statement is filed by the reporting individual or such individual's spouse or unemancipated child from the same donor, excluding gifts from a relative. Include the name and address of the donor. The term "gifts" does not include reimbursements, which term is defined in item 10. Indicate the value and nature of each such gift.

<u>Self, Spouse or Child</u>	<u>Name of Donor</u>	<u>Address</u>	<u>Nature of Gift</u>	<u>Category of Value of Gift</u>
------------------------------	----------------------	----------------	-----------------------	----------------------------------

---

---

---

---

10. Identify and briefly describe the source of any reimbursements for expenditures, excluding

campaign expenditures and expenditures in connection with official duties reimbursed by the political subdivision for which this statement has been filed, in excess of \$1,000 from each such source. For purposes of this item, the term "reimbursements" shall mean any travel-related expenses provided by nongovernmental sources and for activities related to the reporting individual's official duties such as, speaking engagements, conferences, or factfinding events. The term "reimbursements" does not include gifts reported under item 9.

Source

Description

---



---



---



---

11. List the identity and value, if reasonably ascertainable, of each interest in a trust, estate or other beneficial interest, including retirement plans other than retirement plans of the state of New York or the city of New York, and deferred compensation plans established in accordance with the internal revenue code, in which the reporting individual held a beneficial interest in excess of \$1,000 at any time during the preceding year. Do not report interests in a trust, estate or other beneficial interest established by or for, or the estate of, a relative.

Identity

Category of Value \*

---



---



---



---

The value of such interest shall be reported only if reasonably ascertainable.

12. (a) Describe the terms of, and the parties to, any contract, promise, or other agreement between the reporting individual and any person, firm, or corporation with respect to the employment of such individual after leaving office or position (other than a leave of absence).

---



---



---



---

- (b) Describe the parties to and the terms of any agreement providing for continuation of payments or benefits to the reporting individual in excess of \$1,000 from a prior employer other than the political subdivision for which this statement is filed. (This includes interests in or contributions to a pension fund, profit-sharing plan, or life or health insurance; buy-out agreements; severance payments; etc.)

---



---

- 
- 
- 
13. st below the nature and amount of any income in excess of \$1,000 from each source for the reporting individual and such individual's spouse for the taxable year last occurring prior to the date of filing. Nature of income includes, but is not limited to, salary for government employment, income from other compensated employment whether public or private, directorships and other fiduciary positions, contractual arrangements, teaching income, partnerships, honorariums, lecture fees, consultant fees, bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange of real or other property. Income from a business or profession and real estate rents shall be reported with the source identified by the building address in the case of real estate rents and otherwise by the name of the entity and not by the name of the individual customers, clients or tenants, with the aggregate net income before taxes for each building address or entity. The receipt of maintenance received in connection with a matrimonial action, alimony and child support payments shall not be listed.

<u>Self/ Spouse</u>	<u>Source</u>	<u>Nature</u>	<u>Category of Amount</u>
---------------------	---------------	---------------	---------------------------

---



---



---



---

14. st the sources of any deferred income in excess of \$1,000 from each source to be paid to the reporting individual following the close of the calendar year for which this disclosure statement is filed, other than deferred compensation reported in item 11 hereinabove. Deferred income derived from the practice of a profession shall be listed in the aggregate and shall identify as the source, the name of the firm, corporation, partnership or association through which the income was derived, but shall not identify individual clients.

<u>Source</u>	<u>Category of Amount</u>
---------------	---------------------------

---



---



---

15. st each assignment of income in excess of \$1000, and each transfer other than to a relative during the reporting period for which this statement is filed for less than fair consideration of an interest in a trust, estate or other beneficial interest, securities or real property, by the reporting individual, in excess of \$1000, which would otherwise be required to be reported herein and is not or has not been so reported.

<u>Item Assigned or Transferred</u>	<u>Assigned or Transferred to</u>	<u>Category of Value</u>
-------------------------------------	-----------------------------------	--------------------------

---



---



---



16. List below the type and market value of securities held by the reporting individual or such individual's spouse from each issuing entity in excess of \$1,000 at the close of the taxable year last occurring prior to the date of filing, including the name of the issuing entity exclusive of securities held by the reporting individual issued by a professional corporation. Whenever an interest in securities exists through a beneficial interest in a trust, the securities held in such trust shall be listed only if the reporting individual has knowledge thereof except where the reporting individual or the reporting individual's spouse has transferred assets to such trust for his or her benefit in which event such securities shall be listed unless they are not ascertainable by the reporting individual because the trustee is under an obligation or has been instructed in writing not to disclose the contents of the trust to the reporting individual. Securities of which the reporting individual or the reporting individual's spouse is the owner of record but in which such individual or the reporting individual's spouse has no beneficial interest shall not be listed. Indicate percentage of ownership if the reporting person or the reporting person's spouse holds more than five percent of the stock of a corporation in which the stock is publicly traded or more than ten percent of the stock of a corporation in which the stock is not publicly traded. Also list securities owned for investment purposes by a corporation more than fifty percent of the stock of which is owned or controlled by the reporting individual or such individual's spouse. For the purpose of this item the term "securities" shall mean bonds, mortgages, notes, obligations, warrants and stocks of any class, investment interests in limited or general partnerships and certificates of deposits and such other evidences of indebtedness and certificates of interest as are usually referred to as securities. The market value for such securities shall be reported only if reasonably ascertainable and shall not be reported if the security is an interest in a general partnership that was listed in item 8 (a) or if the security is corporate stock, not publicly traded, in a trade or business of a reporting individual or a reporting individual's spouse.

<u>Self/ Spouse</u>	<u>Issuing Entity</u>	<u>Type of Security</u>	<u>Category of Market Value as of the close of the taxable year last occurring prior to the filing of this statement</u>	<u>Percentage of corporate stock owned or controlled</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

17. List below the location, size, general nature, acquisition date, market value and percentage of ownership of any real property in which any vested or contingent interest in excess of \$1,000 is held by the reporting individual or the reporting individual's spouse. Also list real property owned for investment purposes by a corporation more than fifty percent of the stock of which is owned or controlled by the reporting individual or such individual's spouse. Do not list any real property which is the primary or secondary personal residence of the reporting individual or the reporting individual's spouse, except where there is a co-owner who is other than a relative.

<u>Self/ Spouse/ Other Party</u>	<u>Location</u>	<u>Size</u>	<u>General Nature</u>	<u>Acquisition Date</u>	<u>Category of Market Value</u>	<u>Percentage of Owner ship</u>
_____	_____	—	_____	_____	_____	_____
_____	_____	—	_____	_____	_____	_____
_____	_____	—	_____	_____	_____	_____
_____	_____	—	_____	_____	_____	_____
_____	_____	—	_____	_____	_____	_____

18. List below all notes and accounts receivable, other than from goods or services sold, held by the reporting individual at the close of the taxable year last occurring prior to the date of filing and other debts owed to such individual at the close of the taxable year last occurring prior to the date of filing, in excess of \$1,000, including the name of the debtor, type of obligation, date due and the nature of the collateral securing payment of each, if any, excluding securities reported in item 16 hereinabove. Debts, notes and accounts receivable owed to the individual by a relative shall not be reported.

<u>Name of Debtor</u>	<u>Type of Obligation, Date Due, and Nature of Collateral, if any</u>	<u>Category of Amount</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

19. List below all liabilities of the reporting individual and such individual's spouse, in excess of \$5,000 as of the date of filing of this statement, other than liabilities to a relative. Do not list liabilities incurred by, or guarantees made by, the reporting individual or such individual's spouse or by any proprietorship, partnership or corporation in which the reporting individual or such individual's spouse has an interest, when incurred or made in the ordinary course of the trade, business or professional practice of the reporting individual or such individual's spouse. Include the name of the creditor and any collateral pledged by such individual to secure payment of any such liability. A reporting individual shall not list any obligation to pay maintenance in connection with a matrimonial action, alimony or child support payments. Revolving charge account information shall only be set forth if liability thereon is in excess of \$5,000 at the time of filing. Any loan issued in the ordinary course of business by a financial institution to finance educational costs, the cost of home purchase or improvements for a primary or secondary residence, or purchase of a personally owned motor vehicle, household furniture or appliances shall be excluded. If any such reportable liability has been guaranteed by any third person, list the liability and name the guarantor.

<u>Name of Creditor or Guarantor</u>	<u>Type of Liability and Collateral, if any</u>	<u>Category of Amount</u>
--	---	---------------------------



## APPENDIX D

### ARTICLE 18-A INDUSTRIAL DEVELOPMENT

#### 850. Short title

This chapter may be cited as the “New York State Industrial Development Agency Act.”

#### § 852. Policy and purposes of article

It is hereby declared to be the policy of this state to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation, economically sound commerce and industry and economically sound projects identified and called for to implement a state heritage area management plan as provided in title G of the parks, recreation and historic preservation law through governmental action for the purpose of preventing unemployment and economic deterioration by the creation of industrial development agencies which are hereby declared to be governmental agencies and instrumentalities and to grant to such industrial development agencies the rights and powers provided in this article.

It is hereby further declared to be the policy of this state to protect and promote the health of the inhabitants of this state by the conservation, protection and improvement of the natural and cultural or historic resources and environment and to control land, sewer, water, air, noise or general environmental pollution derived from the operation of industrial, manufacturing, warehousing, commercial, recreation, horse racing facilities, railroad facilities and research facilities and to grant such industrial development agencies the rights and powers provided by this article with respect to industrial pollution control facilities.

It is hereby further declared to be the policy of this state to protect and promote the health of the inhabitants of this state and to increase trade through promoting the development of facilities to provide recreation for the citizens of the state and to attract tourists from other states.

The use of all such rights and powers is a public purpose essential to the public interest, and for which public funds may be expended.

#### § 854. Definitions

As used in this act, unless the context otherwise requires:

- (1) “Agency”--shall mean an Industrial Development Agency created pursuant to this act.
- (2) “Bonds”--shall mean the bonds, notes, interim certificates and other obligations issued by the agency pursuant to this act.

(3) "Municipality"--shall mean any county, city, village, town or Indian reservation in the state.

(4) [Eff. until January 31, 2008, pursuant to L.1986, c. 905, § 5; L.1993, c. 356, § 38; L.1997, c. 444, § 8(3). See, also, subd. (4) below.] "Project"--shall mean any land, any building or other improvement, and all real and personal properties located within the state of New York and within or partially within and partially outside the municipality for whose benefit the agency was created, including, but not limited to, machinery, equipment and other facilities deemed necessary or desirable in connection therewith, or incidental thereto, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, civic, commercial or industrial purposes or other economically sound purposes identified and called for to implement a state designated urban cultural park management plan as provided in title G of the parks, recreation and historic preservation law and which may include or mean an industrial pollution control facility, a recreation facility, educational or cultural facility, a horse racing facility, a railroad facility, a continuing care retirement community, or a civic facility, provided, however, that, of agencies governed by this article, only agencies created for the benefit of a county and the agency created for the benefit of the city of New York shall provide financial assistance in any respect to a continuing care retirement community, and provided, however, no agency shall provide financial assistance in respect of any project partially outside the municipality for whose benefit the agency was created without the prior consent thereto by the governing body or bodies of all the other municipalities in which any part of the project is, or is to be, located. Where a project is located partially within and partially outside the municipality for whose benefit the agency was created, the portion of the project outside the municipality must be contiguous with the portion of the project inside the municipality. Provided further, that no agency shall provide financial assistance for any project where the project applicant has any agreement to subsequently contract with a municipality for the lease or purchase of such project or project facility.

(4) [Eff. January 31, 2008, pursuant to L.1986, c. 905, § 5; L.1993, c. 356, § 38; L.1997, c. 444, § 8(3). See, also, subd. (4) above.] "Project"--shall mean any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the municipality for whose benefit the agency was created, including, but not limited to, machinery, equipment and other facilities deemed necessary or desirable in connection therewith, or incidental thereto, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes or other economically sound purposes identified and called for to implement a state designated urban cultural park management plan as provided in title G of the parks, recreation and historic preservation law and which may include or mean an industrial pollution control facility, a recreation facility, educational or cultural facility, a horse racing facility or a railroad facility, provided, however, no agency shall use its funds in respect of any project wholly or partially outside the municipality for whose benefit the agency was created without the prior consent thereto by the governing body or bodies of all the other municipalities in which a part or parts of the project is, or is to be, located.

(5) "Governing body"--shall mean the board or body in which the general legislative powers of the municipality are vested.

(6) "Mortgage"--shall mean a mortgage or other security device.

(7) "Revenues"--shall mean all rents, revenues, fees, charges and other sources of income derived by the agency from the leasing, sale or other disposition of a project or projects.

(8) "Industrial pollution control facility"--shall mean any equipment, improvement, structure or facility or any land and any building, structure, facility or other improvement thereon, or any combination thereof, and all real and personal property deemed necessary therewith, which if within any city are not of a character or nature then or formerly furnished or supplied by the city, having to do with or the end purpose of which is the control, abatement or prevention of land, sewer, water, air, noise or general environmental pollution deriving from the operation of industrial, manufacturing, warehousing, commercial, recreation and research facilities, including, but not limited to any air pollution control facility, noise abatement facility, water management facility, waste water collecting system, waste water treatment works, sewage treatment works system, sewage treatment system or solid waste disposal facility or site.

(9) "Recreation facility"--shall mean any facility for the use of the general public as spectators or participants in recreation activities, including but not limited to skiing, golfing, swimming, tennis, ice skating or ice hockey facilities, together with all buildings, structures, machinery, equipment, facilities and appurtenances thereto which the agency may deem necessary, useful or desirable in connection with the construction, improvement or operation of any such facility, including overnight accommodations and other facilities incidental thereto and facilities that may permit the use of recreation facilities by the general public as participants in recreation activities, but shall not include facilities for automobile or horse racing or other similar activities.

(10) "Horse racing facility"--shall mean any facility for the use of the general public for purpose of conducting pari-mutuel wagering, licensed by the state racing and wagering board, as of January first, nineteen hundred seventy-seven, except non-profit racing associations, including buildings, structures, machinery, equipments, facilities and appurtenances thereto, the construction, reconstruction, acquisition and/or improvement of which shall have been approved by the state racing and wagering board, and which the agency may deem necessary, useful or desirable in connection with the construction, improvement or operation of such racing facility.

(11) "Railroad facility"--shall mean, but shall not be limited to, railroad rights-of-way, beds, bridges, viaducts, tracks, switches and rolling stock and any other attendant structure, equipment, facility or property necessary or appropriate to railroading conducted in conjunction with industrial, commercial, manufacturing, recreational or warehousing operations; provided, however, that (i) no agency shall itself operate a railroad facility for freight or passenger service, but may lease or otherwise make such facility available to an operator, subject to an agreement for the maintenance and operation of such facility for freight

or passenger service, provided that passenger service does not constitute the primary purpose of the railroad facility; (ii) prior to undertaking any project involving acquisition, construction, reconstruction, improvement, maintenance, equipping or furnishing of a railroad facility, an agency shall submit its plans for the proposed project to the commissioner of transportation; the commissioner shall, within sixty days of his receipt of the proposal, submit an analysis of the financial and operational feasibility of the proposed project, along with any recommendations for modification for improving the project's viability, to the agency, the governor, the commissioner of commerce, the temporary president of the senate, the speaker of the assembly and the governing body of the municipality in which the agency is located; and (iii) no agency shall enter into any contract for the acquisition, construction, reconstruction, improvement, maintenance, equipping or furnishing of a railroad facility until fifteen days after the submission of the analysis and recommendations of the commissioner of transportation, or seventy-five days after submission of the agency's plan to the commissioner, whichever is earlier.

(12) "Educational or cultural facility"--shall mean any facility identified and called for to implement a state designated heritage area management plan as provided in title G of the parks, recreation and historic preservation law that is open to the public at large as participants in educational and cultural activities including but not limited to theaters, museums, exhibitions and festival and interpretive facilities, together with buildings, structures, machinery, equipment, facilities and appurtenances thereto which the agency may deem necessary, useful or desirable in connection with the construction, improvement or operation of any such facility, including overnight accommodations and other facilities incidental thereto and facilities that may permit the use of educational or cultural facilities by the general public.

(13) [Eff. until January 31, 2008, pursuant to L.1986, c. 905, § 5; L.1997, c. 444, § 8(3).] "Civic facility"--shall mean any facility, which shall be owned or occupied by a not-for-profit corporation organized and existing under the laws of this state or authorized to conduct activities in this state. Such facilities shall not include convention centers, housing facilities, dormitories for educational institutions or roads, buildings, water systems, sewer systems, or any public facility for use by a municipality in the performance of its governmental functions or medical facilities, which are predominately used for the delivery of medical services, except that such facilities shall include habilitation centers and hospices.

Notwithstanding the limitations contained in the preceding sentence, a civic facility project may include: (a) dormitories for educational institutions; (b) facilities as defined in article twenty-eight of the public health law; and (c) housing facilities primarily designed to be occupied by individuals sixty years of age or older provided that the total cost of such projects as provided for in paragraphs (a), (b), and (c) herein does not exceed twenty million dollars. Nothing in this article shall be deemed to waive any applicable requirement for an operating facility certificate, consent or any other approval as provided by law.

(14) "Financial assistance"--shall mean the proceeds of bonds issued by an agency, straight-leases, or exemptions from taxation claimed by a project occupant as a result of an agency taking title, possession or control (by lease, license or otherwise) to the property or equipment

of such project occupant or of such project occupant acting as an agent of an agency.

(15) "Straight-lease transaction"--shall mean a transaction in which an agency takes title, possession or control (by lease, license or otherwise) to the property or equipment of a project occupant, entitling such property or equipment to be exempt from taxation according to the provisions of section eight hundred seventy-four of this article, and no financial assistance in the form of the proceeds of bonds issued by the agency is provided to the project occupant.

(16) "Affected tax jurisdiction"--shall mean any municipality or school district, in which a project is located, which will fail to receive real property tax payments, or other tax payments which would otherwise be due, except for the tax exempt status of an agency involved in a project.

(17) "Payments in lieu of taxes"--shall mean any payment made to an agency, or affected tax jurisdiction equal to the amount, or a portion of, real property taxes, or other taxes, which would have been levied by or on behalf of an affected tax jurisdiction if the project was not tax exempt by reason of agency involvement.

(18) "Highly distressed area"--shall mean (a) a census tract or tracts or block numbering areas or areas or such census tract or block numbering area contiguous thereto which, according to the most recent census data available, has:

(i) a poverty rate of at least twenty percent for the year to which the data relates or at least twenty percent of households receiving public assistance; and

(ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates; or

(b) a city, town, village or county within a city with a population of one million or more for which: (i) the ratio of the full value property wealth, as determined by the comptroller for the year nineteen hundred ninety, per resident to the statewide average full value property wealth per resident; and (ii) the ratio of the income per resident; as shown in the nineteen hundred ninety census to the statewide average income per resident; are each fifty-five percent or less of the statewide average; or

(c) an area which was designated an empire zone pursuant to article eighteen-B of this chapter.

(19) "Continuing care retirement community"--shall mean any facility that has been granted a certificate of authority pursuant to article forty-six or forty-six-A of the public health law and is established to provide, pursuant to continuing care retirement contracts approved pursuant to article forty-six of the public health law, or fee-for-service continuing care contracts approved pursuant to article forty-six-A of the public health law, a comprehensive, cohesive living arrangement for the elderly, and certified by the commissioner of health, that (i) has been approved for the issuance of industrial development agency bonds by the continuing care retirement community council pursuant to section forty-six hundred four-a of the public health



law except that paragraphs b and g of subdivision two of section forty-six hundred four-a of the public health law shall not apply to a continuing care retirement community granted a certificate of authority pursuant to article forty-six-A of the public health law and (ii) is a not-for-profit corporation as defined in section one hundred two of the not-for-profit corporation law that is (a) eligible for tax-exempt financing under section forty-six hundred four-a of the public health law and this chapter and (b) is exempt from taxation pursuant to section 501(c)(3) of the federal internal revenue code; [FN1] except that “continuing care retirement community” shall not include a facility granted a certificate of authority upon application of a state or local government applicant.

## **§ 856. Organization of industrial development agencies**

1. (a) Upon the establishment of an industrial development agency by special act of the legislature, the governing body of the municipality for whose benefit such agency is established shall file within six months after the effective date of the special act of the legislature establishing such agency or before the first day of July, nineteen hundred sixty-nine, whichever date shall be later, in the office of the secretary of state, a certificate setting forth: (1) the date of passage of the special act establishing the agency; (2) the name of the agency; (3) the names of the members and their terms of office, specifying which member is the chairman; and (4) facts establishing the need for the establishment of an agency in such municipality.

(b) Every such agency shall be perpetual in duration, except that if (1) such certificate is not filed with the secretary of state within six months after the effective date of the special act of the legislature establishing such agency or before the first day of July, nineteen hundred sixty-nine, whichever date shall be later, or if (2) at the expiration of ten years subsequent to the effective date of the special act, there shall be outstanding no bonds or other obligations theretofore issued by such agency or by the municipality for or in behalf of the agency, then the corporate existence of such agency shall thereupon terminate and it shall thereupon be deemed to be and shall be dissolved.

(c) On or before March first of each year, the secretary of state shall prepare a list of agencies, which failed to file a certificate in accordance with provisions of paragraph (a) of this subdivision within the preceding calendar year and transmit a copy of such list to the state comptroller and the commissioner of the department of economic development. On or before March first of each year the commissioner of the department of economic development shall prepare a list of agencies which have dissolved pursuant to paragraph (b) of this subdivision or have ceased to exist pursuant to section eight hundred eighty-two of this chapter and shall transmit a copy of such list to the state comptroller.

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 include representatives of local government, school boards, organized labor and business. 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 chairperson 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.

3. A majority of the members of an agency shall constitute a quorum.

4. Any one or more of the members of an agency may be an official or an employee of the municipality. In the event that an official or an employee of the municipality shall be appointed as a member of the agency, acceptance or retention of such appointment shall not be deemed a forfeiture of his municipal office or employment, or incompatible therewith or affect his tenure or compensation in any way. The term of office of a member of an agency who is an official or an employee of the municipality when appointed as a member thereof by special act of the legislature creating the industrial development agency shall terminate at the expiration of the term of his municipal office.

### **§ 858. Purposes and powers of the agency**

The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities including industrial pollution control facilities, educational or cultural facilities, railroad facilities, horse racing facilities and continuing care retirement communities, provided, however, that, of agencies governed by this article, only agencies created for the benefit of a county and the agency created for the benefit of the city of New York shall be authorized to provide financial assistance in any respect to a continuing care retirement community, and thereby advance the 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; and to carry out the aforesaid purposes, each agency shall have the following powers:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold and dispose of personal property for its corporate purposes;

(4) To acquire by purchase, grant, lease, gift, pursuant to the provisions of the eminent domain procedure law, or otherwise and to use, real property or rights or easements therein necessary for its corporate purposes in compliance with the local zoning and planning regulations and shall take into consideration regional and local comprehensive land use plans and state designated heritage area management plans, and to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of any such property in such manner as the agency shall determine. In the case of railroad facilities, however, the phrase to use real property or rights or easements therein shall not be interpreted to include operation by the agency of rail service

upon or in conjunction with such facilities.

(5) To make by-laws for the management and regulation of its affairs and, subject to agreements with its bondholders, for the regulation of the use of a project or projects.

(6) With the consent of the municipality, to use agents, employees and facilities of the municipality, paying the municipality its agreed proportion of the compensation or costs;

(7) To appoint officers, agents and employees, to prescribe their qualifications and to fix their compensation and to pay the same out of funds of the agency;

(8)(a) To appoint an attorney, who may be the counsel of the municipality, and to fix the attorney's compensation for services which shall be payable to the attorney, and to retain and employ private consultants for professional and technical assistance and advice;

(b) An attorney acting as bond counsel for a project must file with the agency a written statement in which the attorney identifies each party to the transaction which such attorney represents. If bond counsel provides any legal services to parties other than the agency the written statement must describe the nature of legal services provided by such bond counsel to all parties to the transaction, including the nature of the services provided to the agency.

(9) To make contracts and leases, and to execute all instruments necessary or convenient to or with any person, firm, partnership or corporation, either public or private; provided, however, that any extension of an existing contract, lease or other agreement entered into by an agency with respect to a project shall be guided by the provisions of this article;

(10) To acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects;

(11) To accept gifts, grants, loans, or contributions from, and enter into contracts or other transactions with, the United States and the state or any agency of either of them, any municipality, any public or private corporation or any other legal entity, and to use any such gifts, grants, loans or contributions for any of its corporate purposes;

(12) To borrow money and to issue bonds and to provide for the rights of the holders thereof;

(13) To grant options to renew any lease with respect to any project or projects and to grant options to buy any project at such price as the agency may deem desirable;

(14) To designate the depositories of its money either within or without the state;

(15) To enter into agreements requiring payments in lieu of taxes. Such agreements shall be in writing and in addition to other terms shall contain: the amount due annually to each affected tax jurisdiction (or a formula by which the amount due can be calculated), the name and address of the person, office or agency to which payment shall be delivered, the date on which

payment shall be made, and the date on which payment shall be considered delinquent if not paid. Unless otherwise agreed by the affected tax jurisdictions, any such agreement shall provide that payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt due to the status of the agency involved in the project. A copy of any such agreement shall be delivered to each affected tax jurisdiction within fifteen days of signing the agreement. In the absence of any such written agreement, payments in lieu of taxes made by an agency shall be allocated in the same proportions as they had been prior to January first, nineteen hundred ninety-three for so long as the agency's activities render a project non-taxable by affected tax jurisdictions;

(16) To establish and re-establish its fiscal year; and

(17) To do all things necessary or convenient to carry out its purposes and exercise the powers expressly given in this title.

#### **§ 858-a. Compensation, procurement and investment**

1. The compensation of an officer or full-time employee of the agency (but not including part-time employees or consultants, including accountants, attorneys and bond counsel to the agency) shall not be contingent on the granting of financial assistance by an agency.
2. The provisions of section one hundred four-b of this chapter shall be applicable to the procurement of goods and services paid for by an agency for its own use and account.
3. The provisions of sections ten and eleven of this chapter shall be applicable to deposits and investments of funds for an agency's own use and account.

#### **§ 858-b. Equal employment opportunities**

1. Each agency shall ensure that all employees and applicants for employment are afforded equal employment opportunity without discrimination.
2. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of projects of the agency shall be listed with the New York state department of labor community services division, and with the administrative entity of the service delivery area created by the federal job training partnership act (P.L. No. 97-300) in which the project is located. Except as is otherwise provided by collective bargaining contracts or agreements, sponsors of projects shall agree, where practicable, to first consider persons eligible to participate in the federal job training partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the community services division of the department of labor for such such [FN1] new employment opportunities.

## § 859. Financial records

1. (a) Each agency shall maintain books and records in such form as may be prescribed by the state comptroller.

(b) Within ninety days following the close of its fiscal year, each agency or authority shall prepare a financial statement for that fiscal year in such form as may be prescribed by the state comptroller. Such statement shall be audited within such ninety day period by an independent certified public accountant in accordance with government accounting standards established by the United States general accounting office. The audited financial statement shall include supplemental schedules listing all straight-lease transactions and bonds and notes issued, outstanding or retired during the applicable accounting period whether or not such bonds, notes or transactions are considered obligations of the agency. For each issue of bonds or notes such schedules shall provide the name of each project financed with proceeds of each issue, and whether the project occupant is a not-for-profit corporation, the name and address of each owner of each project, the estimated amount of tax exemptions authorized for each project, the purpose for which each bond or note was issued, date of issue, interest rate at issuance and if variable the range of interest rates applicable, maturity date, federal tax status of each issue, and an estimate of the number of jobs created and retained by each project. For each straight-lease transaction, such schedules shall provide the name of each project, and whether the project occupant is a not-for-profit corporation, the name and address of each owner of each project, the estimated amount of tax exemptions authorized for each project, the purpose for which each transaction was made, the method of financial assistance utilized by the project, other than the tax exemptions claimed by the project and an estimate of the number of jobs created and retained by each project.

(c) Within thirty days after completion, a copy of the audited financial statement shall be transmitted to the commissioner of the department of economic development, the state comptroller and the governing body of the municipality for whose benefit the agency was created.

(d) An agency with no bonds or notes issued or outstanding and no projects during the applicable accounting period may apply to the state comptroller for a waiver of the required audited financial statement. Application shall be made on such form as the comptroller may prescribe.

(e) If an agency or authority shall fail to file or substantially complete, as determined by the state comptroller, the financial statement required by this section, the state comptroller shall provide notice to the agency or authority. The notice shall state the following:

(i) that the failure to file a financial statement as required is a violation of this section, or in the case of an insufficient financial statement, the manner in which the financial statement submitted is deficient;

(ii) that the agency or authority has thirty days to comply with this section or provide an

adequate written explanation to the comptroller of the agency's or authority's reasons for the inability to comply; and

(iii) that the agency's or authority's failure to provide either the required financial statement or an adequate explanation will result in the notification of the chief executive officer of the municipality for whose benefit the agency or authority was created of the agency's noncompliance with this section. Where such agency or authority has failed to file the required statement, the comptroller shall additionally notify the agency or authority that continued failure to file the required statement may result in loss of the agency's or authority's authority to provide exemptions from state taxes.

(iv) If an agency or authority after thirty days has failed to file the required statement or the explanation in the manner required by subparagraph (i) of this paragraph, or provides an insufficient explanation, the comptroller shall notify the chief executive officer of the municipality for whose benefit the agency or authority was created and the agency of the agency's or authority's noncompliance with this section. Such notice from the state comptroller shall further delineate in what respect the agency or authority has failed to comply with this section. If the agency or authority has failed to file the required statement, the notice shall additionally state that continued failure to file the required statement may result in loss of the agency's or authority's authority to provide exemptions from state taxes.

(v) If, thirty days after notification of the chief executive officer of the municipality for whose benefit the agency or authority was created of the agency's or authority's noncompliance, the agency or authority fails to file the required statement, the comptroller shall notify the chief executive officer of the municipality for whose benefit that agency or authority was created and the agency or authority that if such report is not provided within sixty days, that the agency or authority will no longer be authorized to provide exemptions from state taxes.

(vi) If, sixty days after the notification required by subparagraph (v) of this paragraph, the comptroller has not received the required statement, the agency or authority shall not offer financial assistance which provides exemptions from state taxes until such financial statement is filed and the comptroller shall so notify the agency or authority and the chief executive officer of the municipality for whose benefit the agency was created. Provided, however, that nothing contained in this paragraph shall be deemed to modify the terms of any existing agreements.

(f) Within thirty days after completion, a copy of an audited financial statement which contains transactions of or bonds or notes of civic facilities as defined in paragraph (b) of subdivision thirteen of section eight hundred fifty-four of this article, shall be transmitted by the agency to the commissioner of health, the chair of the senate finance committee, the chair of the assembly ways and means committee, the chair of the senate health committee and the chair of the assembly health committee.

2. On or before September first of each year, the commissioner of the department of economic development shall prepare and submit to the governor, speaker of the assembly, majority leader of the senate, and the state comptroller, a report setting forth a summary of the significant

trends in operations and financing by agencies and authorities; departures from acceptable practices by agencies and authorities; a compilation by type of the bonds and notes outstanding; a compilation of all outstanding straight-lease transactions; an estimate of the total number of jobs created and retained by agency or authority projects; and any other information which in the opinion of the commissioner bears upon the discharge of the statutory functions of agencies and authorities.

3. On or before April first, nineteen hundred ninety-six, the commissioner shall submit to the director of the division of the budget, the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee, the chairman of the assembly ways and means committee, the chairman of the senate local government committee, the chairman of the senate committee on commerce, economic development and small business, the chairman of the assembly committee on commerce, industry and economic development, the chairman of the assembly local governments committee and the chairman of the assembly real property taxation committee an evaluation of the activities of industrial development agencies and authorities in the state prepared by an entity independent of the department. Such evaluation shall identify the effect of agencies and authorities on: (a) job creation and retention in the state, including the types of jobs created and retained; (b) the value of tax exemptions provided by such agencies and authorities; (c) the value of payments received in lieu of taxes received by municipalities and school districts as a result of projects sponsored by such entities; (d) a summary of the types of projects that received financial assistance; (e) a summary of the types of financial assistance provided by the agencies and authorities; (f) a summary of criteria for evaluation of projects used by agencies and authorities; (g) a summary of tax exemption policies of agencies and authorities; and (h) such other factors as may be relevant to an assessment of the performance of such agencies and authorities in creating and retaining job opportunities for residents of the state. Such evaluation shall also assess the process by which agencies and authorities grant exemptions from state taxes and make recommendations for the most efficient and effective procedures for the use of such exemptions. Such evaluation shall further include any recommendations for changes in laws governing the operations of industrial development agencies and authorities, which would enhance the creation, and retention of jobs in the state.

#### **§ 859-a. Additional prerequisites to the provisions of financial assistance**

Prior to providing any financial assistance 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 that the agency is contemplating with respect to such project. Such assistance 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, unless the agency has followed the procedures for deviation from such policy specified in paragraph (b) of such subdivision.

2. The agency must hold a public hearing with respect to the project and the proposed financial assistance 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. [Eff. until January 31, 2008, pursuant to L.1997, c. 444, § 8(3). See, also, subd. 3 below.] The agency must give at least thirty 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. 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 contemplated by the agency with respect to the project, and provide an opportunity for the public to review the project application, which shall include an analysis of the costs and benefits of the proposed project.

3. [Eff. January 31, 2008, pursuant to L.1997, c. 444, § 8(3). See, also, subd. 3 above.] 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. 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 contemplated by the agency with respect to the project.

**§ 859-b. Special procedure for the provision of financial assistance to continuing care retirement communities**

1. Any applicant for financing of a continuing care retirement community shall present a completed application for a certificate of authority and documentation establishing the continuing care retirement community council's approval of that application, pursuant to article forty-six of the public health law.

2. If requested by the agency, the applicant shall present an analysis dealing with any of the issues identified in paragraph (a) of subdivision four of section eight hundred seventy-four of this article.

3. Applicants shall present the financial feasibility study, including a financial forecast and market study, and the analysis of economic costs and benefits required by article forty-six of the public health law.

4. Any information presented by the applicant pursuant to subdivisions one, two and three of this section shall be made available at the time required for published notice of the public hearing required by section eight hundred fifty-nine-a of this article. The agency shall make such information available during regular office hours in at least two locations, at least one of which shall be in the city, town or village within which the proposed project is located. Such notice shall include a statement indicating the location and times of availability of the information required by this section.



5. The industrial development agency may require the applicant to provide any additional information, which it requires in order to meet the purposes of this article.

### **§ 860. Moneys of the agency**

The agency shall have power to contract with the holders of any of its bonds or notes as to the custody, collection, securing, investment and payment of any moneys of the agency or any moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and to carry out any such contract. Moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and deposits of such moneys may be secured in the same manner as moneys of the agency, and all banks and trust companies are authorized to give such security for such deposits.

### **§ 861. Notification of budget**

Each agency shall mail or deliver to the chief executive officer and the governing body of the municipality for whose benefit the agency was established and make available for public inspection and comment its proposed budget for the forthcoming fiscal year, no later than twenty business days before adoption. At such time, the agency shall file its proposed budget with the clerk of the municipality for whose benefit the agency was established. Such proposed budget shall contain detailed estimates in writing of the amount of revenues to be received and expenditures to be made during the forth coming fiscal year. Following its consideration of the comments received, the agency may revise its budget accordingly and shall file the revised budget with the clerk of the municipality.

### **862. Restrictions on funds of the agency**

*Eff. February 1, 2008 pursuant to L.1993, c. 356, § 38.*

No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

### **§ 862-a. Additional restrictions on funds of the agency in connection with continuing care retirement communities**

No resolution authorizing the issuance of bonds, notes or other obligations of the agency, or for providing financial assistance in any respect, for any continuing care retirement community project shall be adopted unless and until the project has received a certificate of authorization pursuant to section forty-six hundred four-a of the public health law, and unless the project will

serve the public purposes of this article by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state.

#### **§ 864. Bonds of the agency**

(1) The agency shall have the power and is hereby authorized from time to time to issue negotiable bonds for any of its corporate purposes without limitation as to amount. The agency shall have power from time to time and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose hereinabove described. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase or redemption of the bonds to be refunded. Except as may otherwise be expressly provided by the agency, the bonds of every issue shall be special obligations of the agency payable solely from revenues derived from the leasing, sale or other disposition of a project, subject only to any agreements with the holders of particular bonds pledging any particular moneys or revenues. Whether or not the bonds are of such form and character as to be negotiable instruments under article eight of the uniform commercial code, [FN1] the bonds shall be, and are hereby made, negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds for registration.

(2) The bonds shall be authorized by resolution of the agency and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, either within or without the state, and be subject to such terms of redemption as such resolution or resolutions may provide. The bonds may be sold at public or private sale at such price or prices as the agency shall determine.

(3) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(a) pledging all or any part of the revenues derived from the leasing, sale or other disposition of a project or projects to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;

(b) the rentals, fees, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(c) the setting aside of reserves or sinking funds, and the regulation and disposition thereof;

(d) limitations on the right of the agency to restrict and regulate the use of a project;

(e) limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or any issue of the bonds;

(f) the terms upon which additional bonds may be issued and secured; the refunding of outstanding or other bonds;

(g) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(h) vesting in a trustee or trustees such property, rights, powers and duties in trust as the agency may determine which may include any or all the rights, powers and duties of the trustees appointed by the bondholders and limiting or abrogating the right of the bondholders to appoint a trustee or limiting the rights, duties and powers of trustee;

(i) any other matters, of like or different character, which in any way affect the security or protection of the bonds.

#### **866. Notes of the agency**

The agency shall have power from time to time to issue notes and from time to time to issue renewal notes (herein referred to as notes) maturing not later than five years from their respective original dates for any purpose or purposes for which bonds may be issued, whenever the agency shall determine that payment thereof can be made in full from any moneys or revenues which the agency expects to receive from any source. The agency may secure the notes in the same manner and with the same effect as herein provided for bonds. The notes shall be issued in the same manner as bonds. The agency shall have power to make contracts for the future sale from time to time of the notes, by which the purchasers shall be committed to purchase the notes from time to time on terms and conditions stated in such contracts, and the agency shall have power to pay such consideration as it shall deem proper for such commitments. In case of default on its notes or violation of any of the obligations of the agency to the noteholders, the noteholders shall have all the remedies provided herein for bondholders. Such notes shall be as fully negotiable as the bonds of the agency.

#### **§ 868. Agreements of the municipality and state**

The municipality is authorized to, and the state does hereby, pledge to and agree with the holders of the bonds or notes that neither the municipality nor the state, respectively, will limit or alter the rights, hereby vested in the agency to acquire, construct, reconstruct, improve, maintain, equip and furnish the project or projects, to establish and collect rentals, fees and other charges and to fulfill the terms of any agreements made with the holders of the bonds or notes nor in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes, together with interest thereon, with interest on any unpaid installments of

interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders or noteholders are fully met and discharged.

#### **§ 870. State and municipality not liable on bonds or notes**

The bonds or notes and other obligations of the authority shall not be a debt of the state or of the municipality, and neither the state nor the municipality shall be liable thereon, nor shall they be payable out of any funds other than those of the agency.

#### **§ 872. Bonds and notes as legal investment**

The bonds and notes are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, and all other persons whatsoever except as hereinafter provided, who are now or may hereafter be authorized to invest in bonds or notes or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds or notes are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

#### **§ 874. Tax exemptions**

(1) It is hereby determined that the creation of the agency and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state of New York and is a public purpose, and the agency shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this title and shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities.

(2) Any bonds or notes issued pursuant to this title, together with the income therefrom, as well as the property of the agency, shall be exempt from taxation, except for transfer and estate taxes.

(3) Payments in lieu of taxes received by the agency shall be remitted to each affected tax jurisdiction within thirty days of receipt.

(4)(a) The agency shall establish a uniform tax exemption policy, with input from affected tax jurisdictions, which shall be applicable to the provision of financial assistance pursuant to section eight hundred fifty-nine-a of this chapter and shall provide guidelines for the claiming of real property, mortgage recording, and sales tax exemptions. Such guidelines shall include, but not be limited to: period of exemption; percentage of exemption; types of projects for which exemptions can be claimed; procedures for payments in lieu of taxes and instances in which real

property appraisals are to be performed as a part of an application for tax exemption; in addition, agencies shall in adopting such policy consider such issues as: the extent to which a project will create or retain permanent, private sector jobs; the estimated value of any tax exemptions to be provided; whether affected tax jurisdictions shall be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided; the impact of a proposed project on existing and proposed businesses and economic development projects in the vicinity; the amount of private sector investment generated or likely to be generated by the proposed project; the demonstrated public support for the proposed project; the likelihood of accomplishing the proposed project in a timely fashion; the effect of the proposed project upon the environment; the extent to which the proposed project will require the provision of additional services, including, but not limited to additional educational, transportation, police, emergency medical or fire services; and the extent to which the proposed project will provide additional sources of revenue for municipalities and school districts.

(b) [Eff. until January 31, 2008, pursuant to L.1997, c. 444, § 8(3). See, also, par. (b) below.] The uniform tax exemption policy established pursuant to this section shall be reviewed and readopted by the agency on or before April first, nineteen hundred ninety-nine following a public hearing. Notice of this hearing shall be given to the chief executive officer of each affected tax jurisdictions at least sixty days before the hearing. Prior to the hearing the agency shall review, and respond to any correspondence received from any affected tax jurisdiction. The agency shall allow any representative of an affected tax jurisdiction to address the agency at the hearing. The agency shall develop and submit a report to the affected tax jurisdictions sixty days prior to the hearing which details the projects which the agency has assisted in the previous five years and shall include information specific to each project including the period of exemption; the type of project; the estimated percentage of exemption by year; the estimated value of any other assistance provided by the agency; whether commitments for payments in lieu of taxes were made and met, the estimated value of such payments by year and affected tax jurisdiction; the estimated amount of private sector investment generated by the project; and the extent to which the project created or retained permanent, private sector jobs.

(b) [Eff. January 31, 2008, pursuant to L.1997, c. 444, § 8(3). See, also, par. (b) above.] The agency shall establish a procedure for deviation from the uniform tax exemption policy required pursuant to this subdivision. The agency shall set forth in writing the reasons for deviation from such policy, and shall further notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefor.

(c) [Eff. until January 31, 2008, pursuant to L.1997, c. 444, § 8(3).] The agency shall establish a procedure for deviation from the uniform tax exemption policy required pursuant to this subdivision. The agency shall set forth in writing the reasons for deviation from such policy, and shall further notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefor.

Such notice to the affected tax jurisdictions shall be given to the chief executive officer of each affected tax jurisdiction at least thirty days prior to the meeting of the agency at which the agency shall consider whether to approve such proposed deviation. Prior to taking final action at said meeting, the agency shall review and respond to any correspondence received from any

affected tax jurisdiction regarding such proposed deviation. The agency shall allow any representative of an affected tax jurisdiction present at such meeting to address the agency regarding such proposed deviation.

(5) Payments in lieu of taxes which are delinquent under the agreement or which an agency fails to remit pursuant to subdivision three of this section, shall be subject to a late payment penalty of five percent of the amount due which shall be paid by the project occupant (where taxes are delinquent because of the occupant's failure to make the required payment) or the agency (because of the agency's failure to remit pursuant to subdivision three of this section) to the affected tax jurisdiction at the time the payment in lieu of taxes is paid. For each month, or part thereof, that the payment in lieu of taxes is delinquent beyond the first month, interest shall accrue to and be paid to the affected tax jurisdiction on the total amount due plus a late payment penalty in the amount of one percent per month until the payment is made.

(6) An affected tax jurisdiction which has not received a payment in lieu of taxes due to it under an agreement may commence legal action in any court of competent jurisdiction directly against any person, firm, corporation, organization or agency which is obligated to make payments in lieu of taxes under an agreement and has failed to do so. In such an action, the affected tax jurisdiction shall be entitled to recover the amount due, the late payment penalty, interest, expenses, costs and disbursements together with the reasonable attorneys' fees necessary to prosecute such action. Nothing herein shall be construed as providing an affected tax jurisdiction with the right to sue and recover from an agency which has not received payments in lieu of taxes from a project occupant.

(7) Any refinancing of a project shall be subject to the provisions of section eight hundred fifty-nine-a of this chapter, except where such refinancing was previously approved pursuant to such section.

(8) Agents of an agency and project operators shall annually file a statement with the state department of taxation and finance, on a form and in such a manner as is prescribed by the commissioner of taxation and finance, of the value of all sales and use tax exemptions claimed by such agents or agents of such agents or project operators, including, but not limited to, consultants or subcontractors of such agents or project operators, under the authority granted pursuant to this section. The penalty for failure to file such statement shall be the removal of authority to act as an agent of an agency or a project operator.

(9) [Eff. until January 31, 2008, pursuant to L.1997, c. 444, § 8(3).] Within thirty days of the date that the agency designates a project operator or other person to act as agent of the agency for purposes of extending a sales tax exemption to such person, the agency shall file a statement with the department of taxation and finance relating thereto, on a form and in such manner as is prescribed by the commissioner of taxation and finance, identifying each such agent so named by the agency, setting forth the taxpayer identification number of each such agent, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating the agency's rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such

designation as agent became effective and indicating the date upon which such designation as agent shall cease.

#### **§ 876. Tax contract by the state**

The state covenants with the purchasers and with all subsequent holders and transferees of bonds or notes issued by the agency pursuant to this title, in consideration of the acceptance of and payment for the bonds or notes, that the bonds and notes of the agency issued pursuant to this title and the income therefrom, and all moneys, funds and revenues pledged to pay or secure the payment of such bonds or notes shall at all times be free from taxation except for estate taxes and taxes on transfers by or in contemplation of death.

#### **§ 878. Remedies of bondholders and noteholders**

(1) In the event that the agency shall default in the payment of principal or of interest on any issue of the bonds or notes after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the agency shall fail or refuse to comply with the provisions of this title, or shall default in any agreement made with the holders of any issue of the bonds or notes, the holders of twenty-five per centum in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

(2) Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such bonds or notes, then outstanding shall, in his or its own name:

(a) by suit, action or special proceeding enforce all rights of the bondholders or noteholders, including the right to require the agency to collect revenues adequate to carry out any agreement as to, or pledge of, such revenues, and to require the agency to carry out any other agreements with the holders of such bonds or notes and to perform its duties under this title;

(b) bring suit upon such bonds or notes;

(c) by action or special proceeding, require the authority to account as if it were the trustee of an express trust for the holders of such bonds or notes;

(d) by action or special proceeding, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds or notes;

(e) declare all such bonds or notes due and payable, and if all defaults shall be made good then with the consent of the holders of twenty-five per centum of the principal amount of such bonds or notes then outstanding, to annul such declaration and its consequences.

(3) The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on

behalf of bondholders or noteholders. The venue of any such suit, action or proceeding shall be laid in the county in which the project or projects are located.

(4) Before declaring the principal of all such bonds due and payable, the trustee shall first give thirty days' notice in writing to the agency.

(5) Any such trustee, whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of a project, the revenues of which are pledged for the security of the bonds of such issue, and such receiver may enter and take possession of such part or parts of the project and, subject to any pledge or agreement with bondholders or noteholders, shall take possession of all moneys and other property derived from or applicable to the acquisition, construction, operation, maintenance and reconstruction of such part or parts of the project and proceed with the acquisition of any necessary real property in connection with the project that the agency has covenanted to construct, and with any construction which the agency is under obligation to do and to operate, maintain and reconstruct such part or parts of the project and collect and receive all revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders or noteholders relating thereto and perform the public duties and carry out the agreements and obligations of the agency under the direction of the court. In any suit, action or proceeding by the trustee, the fee, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from such project.

(6) Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

#### **§ 880. Actions against the agency**

(1) In an action against the agency founded upon tort, the complaint shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims upon which the action is founded were presented to a member of the agency and to its secretary or to its chief executive officer, and that the agency has neglected or refused to make an adjustment or payment thereof for thirty days after the presentment.

(2) In a case founded upon tort, a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against the agency or an officer, appointee or employee thereof, and the provisions of section fifty-e of the general municipal law shall govern the giving of such notice. No action shall be commenced more than one year after the cause of action therefor shall have accrued.

#### **§ 882. Termination of the agency**



Whenever all of the bonds or notes issued by the agency shall have been redeemed or cancelled, the agency shall cease to exist and all rights, titles, and interest and all obligations and liabilities thereof vested in or possessed by the agency shall thereupon vest in and be possessed by the municipality.

**§ 883. Conflicts of interest**

All members, officers, and employees of an agency or authority shall be subject to the provisions of article eighteen of this chapter.

**§ 884. Public bidding**

The provisions of any law relating to the requirement of public bidding with respect to the construction of public facilities or projects shall not be applicable to the acquisition, construction, reconstruction, improvement, maintenance, equipping and furnishing of projects authorized by this act.

**§ 886. Title not affected if in part unconstitutional or ineffective**

If any section, clause or provision of this title shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

**§ 888. Inconsistent provisions in other acts superseded**

Insofar as the provisions of this title are inconsistent with the provisions of any other act, general or special, or of any local laws of the municipality, the provisions of this title shall be controlling except in cases of inconsistency with the Indian law.

**§ 895. Onondaga County Industrial Development Agency**

1. For the benefit of the county of Onondaga and the inhabitants thereof, an industrial development agency, to be known as the ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter upon industrial development agencies. It shall be organized in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. Its members shall be appointed by the governing body of the county of Onondaga. The agency, its members, officers and employees, and its operations and activities, except as provided specifically herein, shall be governed by the provisions of title one of article eighteen-A of this chapter.

2. In addition to the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter, the agency shall have the power (i) to acquire, construct, own,

maintain, and lease or sell to a railroad or private business corporation any interest including easements or rights of way, in one or more railroad supporting service facilities located in Onondaga county, including necessary switching apparatus, track, and other equipment necessary or convenient thereto, which will be used in conjunction with industrial, manufacturing, commercial or warehousing operations and (ii) to finance such facilities through the issuance of its bonds and notes, when in the judgment of the agency, such facilities will serve to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, and research facilities including industrial pollution control facilities and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the state and improve their prosperity and standard of living.