

New York State Senate Passes 10-Bill Legislation Package Aimed at Industrial Development Agency Reform

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As the nation emerges from the effects of shutdowns caused by the COVID-19 pandemic, transparency and accountability continue to be a primary focus of legislators at the federal, state and local levels of government. The New York State Legislature has been no exception. On June 3, 2021, the New York State Senate (Senate) passed 10 bills further regulating the conduct of local industrial development agencies (IDAs).

In 1969, New York State enacted the New York State Industrial Development Agency Act, which is codified in the General Municipal Law (GML). Under the GML, IDAs are State-level, independent, corporate governmental agencies and, therefore, avoid constitutional debt limitations and restrictions on lending of public credit to private businesses.

IDAs are formed for the purposes of promoting the economic welfare, recreation opportunities and prosperity of the inhabitants of the State of New York; developing certain projects to advance the job opportunities, health, general prosperity and economic welfare of the people of the State; and preventing unemployment and economic deterioration. IDAs achieve these purposes by providing "financial assistance" to qualified businesses that apply to the IDA for such financial assistance. The agencies can offer sales and use tax, mortgage recording tax and property tax breaks to some local projects, as well as other benefits depending on the authority. Since the inception of IDAs in New York State, the State legislature and courts have not heavily regulated or curbed the power granted to IDAs under the GML.

The legislation recently passed by the Senate is intended to reform and bring accountability to IDAs.

The bills are the culmination of efforts by Senate Democrats seeking stronger enforcement of existing laws and compliance within the many local IDAs. A similar package of bills was proposed in 2019. The bills are now with the New York State Assembly, also controlled by Democrats, for consideration.

The 10-bill package addresses a number of issues, including:

- **Preventing Intra-State Piracy:** S.1656A prohibits IDAs from providing financial assistance for the purpose of facilitating relocation of "any facility or plant" to a different region of the State. The bill expands on the current language in the GML, restricting IDAs from facilitating the relocation of "industrial or manufacturing plants" from one part of the State to another.
- **Notice Requirements to Taxing Jurisdictions:** S.3256 requires IDAs to notify any affected local taxing jurisdictions and school districts prior to the approval of projects by IDA boards.
- **Disposal of Property:** S.4610 requires that when land is disposed of by public authorities, IDAs disclose ownership information, ensuring that disposals and any contracts of disposal of property that contain rights of first refusal make certain that the land is transferred at or above fair market value, or if the land is transferred for less than fair market value, it is in the public interest to do so.
- **Transparency of Beneficial Owners:** S.4611 ensures that when land is disposed of by public authorities, the names of all beneficial owners of the purchasing entity shall be disclosed via an explanatory statement.
- **Ability of Counties to Examine IDAs:** S.235A allows county comptrollers to independently audit IDAs and local development corporations.

- **Eliminating Conflicts of Interest:** S.1769 prohibits any elected official serving at the county, town, city or village level, from serving as a member of the board of any IDA within the county. In addition, S.5671B prohibits an elected officer of the municipality from being chosen by his or her appointees to serve as a paid employee of the IDA.
- **Public Access to Information:** S.1207 allows the public to access and inspect information reported by public authorities to the Public Authorities Reporting Information System (PARIS).
- **Prohibiting Improper Profiting from IDAs:** S.1543A prohibits elected and government officials from receiving compensation for legal fees, consulting or other work performed for an IDA.

- **Preservation of Projects:** S.2728 amends the GML to define "regionally significant projects" as projects where the IDA board and chief executive of the municipality or county determine that these projects are likely to attract a significant number of visitors and will preserve or increase permanent, private sector jobs.
- **Notification of the Expiration of a Payment in Lieu of Taxes (PILOT) Agreement:** S.4471A requires IDAs to notify an affected taxing jurisdiction within two years of the expiration of a PILOT agreement or immediately upon the early termination of an agreement.

Although these bills still need to pass through the Assembly and be signed into law by the Governor, it is clear that IDAs and other local development agencies are facing increased scrutiny from State legislators. Developers of

commercial real estate in New York State should give serious consideration to these legislative proposals when applying to IDAs or other local development corporations for financial assistance and in dealing with the affected taxing jurisdictions.

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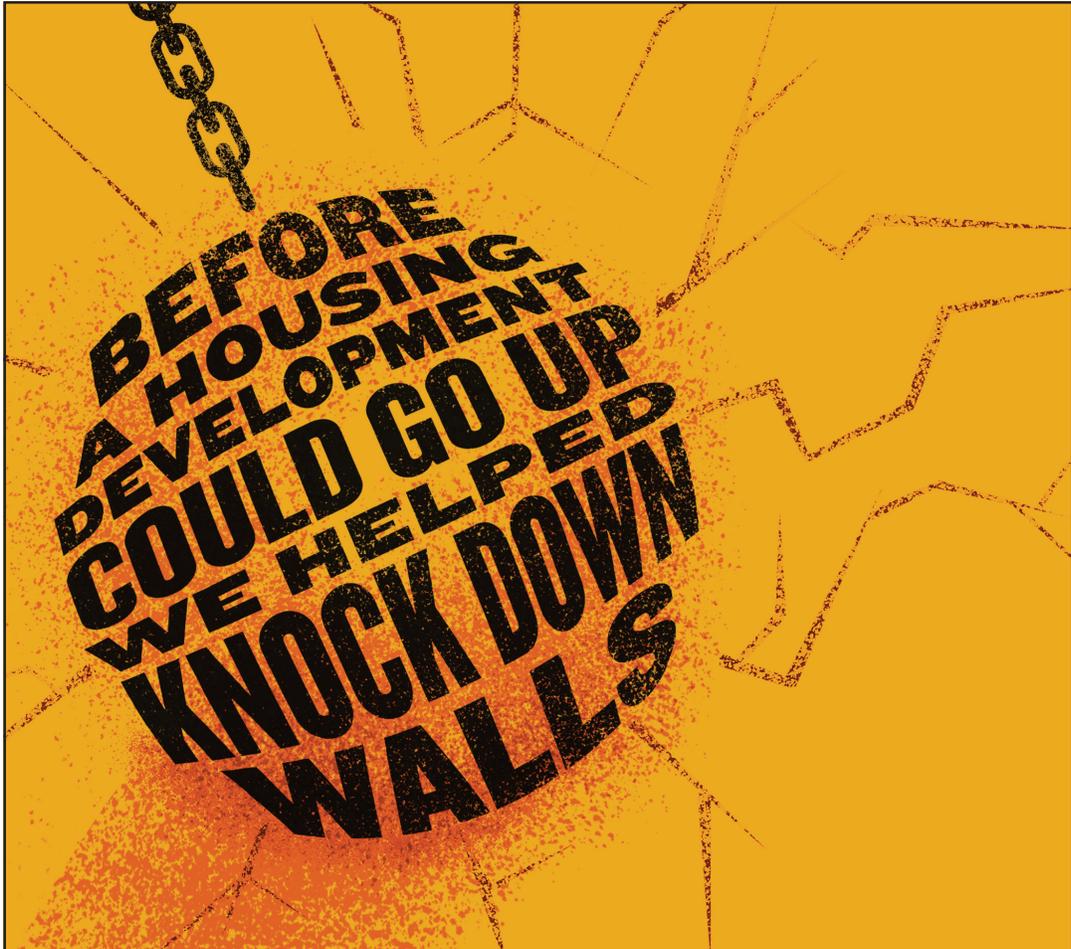
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