

STATE OF NEW YORK

S. 4291--A
Cal. No. 587

A. 6827--A

1989-1990 Regular Sessions

SENATE - ASSEMBLY

March 28, 1989

IN SENATE -- Introduced by Sen. COOK -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

IN ASSEMBLY -- Introduced by M. of A. TONKO, YEVOLI, YOUNG, ZIMMER -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, in relation to requiring financial reporting and audit of industrial development agencies by the state comptroller

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Section 30 of the general municipal law is amended by add-
2 ing a new subdivision 6 to read as follows:
3 6. Annually, each industrial development agency shall file a financial
4 report pursuant to section eight hundred fifty-nine of this chapter.
5 § 2. Sections 31, 33, 34, 35, 36, 37 and 38 of the general municipal
6 law, as amended by chapter 696 of the laws of 1964, paragraph (a) of
7 subdivision 2 as amended and subdivision 4 of section 35 as added by
8 chapter 376 of the laws of 1988, are amended to read as follows:
9 § 31. Form of reports. The reports shall be in the form to be
10 prescribed by the comptroller and shall contain:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

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1 1. A statement of the receipts of such municipal corporation, indus-
2 trial development agency, district, agency or activity from all sources
3 and of all accounts or revenue which may be due and uncollected at the
4 close of the fiscal year.

5 2. A statement of the disbursements of such municipal corporation,
6 industrial development agency, district, agency or activity during the
7 fiscal year.

8 3. A detailed statement of the indebtedness of the municipal corpora-
9 tion, industrial development agency, district, agency or activity at the
10 close of the fiscal year, the provisions made for the payment thereof,
11 together with the purposes for which it was incurred.

12 4. A statement of the costs of ownership and operation and of the in-
13 come of each and every public service industry owned, maintained or
14 operated by any such municipal corporation, industrial development
15 agency, district, agency or activity.

16 5. Such further or more specific information in relation to the cost
17 of any branch of the service, or the cost of any improvement, of such
18 municipal corporation, industrial development agency, district, agency
19 or activity, as may be required by the comptroller.

20 § 33. Accounts of officers to be examined. The comptroller shall
21 cause the accounts of all officers of each such municipal corporation,
22 industrial development agency, district, agency and activity to be in-
23 spected and examined by one or more examiners of municipal affairs for
24 such periods as the comptroller shall deem necessary. On every such ex-
25 amination inquiry shall be made as to the financial condition and
26 resources of the municipal corporation, industrial development agency,
27 district, agency or activity, and into the method and accuracy of its
28 accounts.

29 § 34. Powers and duties of examiners. The comptroller and each exa-
30 miner of municipal affairs shall have power to examine into the finan-
31 cial affairs of every such municipal corporation, industrial development
32 agency, district, agency and activity and to administer an oath to any
33 person whose testimony may be required, and to compel the appearance and
34 attendance of such person for the purpose of any such examination and
35 investigation, and the production of books and papers. In the case of a
36 municipal corporation, industrial development agency, or school dis-
37 trict, no such person shall be compelled to appear or be examined
38 elsewhere than within such municipal corporation, industrial development
39 agency, or school district. In the case of any district other than a
40 school district, no such person may be compelled to appear or be exa-
41 mined elsewhere than within the town or one of the towns in which such
42 district or portion thereof is located. In the case of an urban renewal
43 agency, no such person shall be compelled to appear or be examined out-
44 side the municipal corporation wherein such agency is established. In
45 the case of an activity, no such person shall be compelled to appear
46 outside the area served by the activity. Willful false swearing in such
47 examination shall be perjury and shall be punishable as such.

48 § 35. Filing of report of examination and notice thereof. 1. A
49 report of such examination shall be made and shall be filed in the of-
50 fice of the state comptroller and in the office of the clerk of the
51 municipal corporation, industrial development agency, district, agency
52 or activity, or with the secretary if there is no clerk. An additional
53 copy thereof shall be filed with the chief fiscal officer, except that
54 in the case of a school district, such additional copy shall be filed in
55 the office of the chairman of the board of trustees, the president of

1 the board of education or the sole trustee, as the case may be. When so
2 filed, each such report and copy thereof shall be a public record open
3 to inspection by any interested person.

4 2. (a) Within ten days after the filing of a report of examination
5 performed by the office of the state comptroller, a report of an exter-
6 nal audit performed by an independent public accountant or any manage-
7 ment letter prepared in conjunction with such an external audit with the
8 clerk of the municipal corporation, industrial development agency, dis-
9 trict, agency or activity, or with the secretary if there is no clerk,
10 he shall give public notice thereof in substantially the following form:
11 "Notice is hereby given that the fiscal affairs of (name of municipal
12 corporation, industrial development agency, district, agency or activ-
13 ity) for the period beginning on..... and ending
14 on....., have been examined by (the office of the state comp-
15 troller or an independent public accountant), and that the (report of
16 examination performed by the office of the state comptroller or report
17 of, or management letter prepared in conjunction with, the external au-
18 dit by the independent public accountant) has been filed in my office
19 where it is available as a public record for inspection by all in-
20 terested persons. Pursuant to section thirty-five of the general municip-
21 al law, the governing board of (name of municipal corporation, dis-
22 trict, agency or activity) may, in its discretion, prepare a written
23 response to the (report of examination performed by the office of the
24 state comptroller or the report of external audit or management letter
25 by independent public accountant) and file any such response in my of-
26 fice as a public record for inspection by all interested persons not
27 later than (last date on which response may be filed)."

28 (b) Except as otherwise provided for a common school district, the
29 clerk, or secretary if there is no clerk, shall cause such notice to be
30 published at least once in the official newspaper, or if there be no of-
31 ficial newspaper, in a newspaper having general circulation in the
32 municipal corporation, industrial development agency, district or area
33 served by the agency or activity. If there be no newspaper having gen-
34 eral circulation, the clerk, or the secretary if there is no clerk,
35 shall post such notice conspicuously in ten public places in the municip-
36 al corporation, industrial development agency, district or area served.
37 In a common school district which maintains a home school, the clerk
38 shall post such notice on the front door of the school house. In a com-
39 mon school district which does not maintain a home school, the clerk
40 shall post such notice conspicuously in at least five public places in
41 the district.

42 (c) The clerk of every municipal corporation, industrial development
43 agency, district, agency and activity, or the secretary if there is no
44 clerk, shall file in his office proof of the publication or posting of
45 notices pursuant to this section. The proof so filed shall be in such
46 form as may be prescribed by the state comptroller.

47 (d) In each school district subject to the jurisdiction of a district
48 superintendent, under the provisions of article forty-five of the educa-
49 tion law, such district superintendent shall ascertain that the public
50 notice required by this subdivision has been published or posted, as the
51 case may be.

52 3. The clerk, or secretary if there is no clerk, shall present the
53 report of the examination to the governing body of the municipal cor-
54 poration, industrial development agency, district, agency or activity

1 for its consideration at the first meeting thereof held after the filing
2 of the report with the clerk or secretary.

3 4. (a) The governing board or other board, officer or employee of the
4 municipal corporation, industrial development agency, district, agency
5 or activity receiving a report of an external audit performed by an in-
6 dependent public accountant or a management letter prepared in conjunc-
7 tion with such an audit shall file in the office of the clerk of the
8 municipal corporation, industrial development agency, district, agency
9 or activity, or with the secretary if there is no clerk, and shall fur-
10 nish to the comptroller, a copy of the report or letter within ten days
11 after receipt. If the report or letter is not received by the governing
12 board, a copy shall be provided to the governing board within three days
13 after receipt by any other board, officer or employee receiving the
14 same.

15 (b) (1) Not later than ninety days after presentation to the governing
16 board of a report of examination performed by the office of the state
17 comptroller, or receipt by the governing board of any report of an ex-
18 ternal audit performed by an independent public accountant or any
19 management letter in conjunction with such an audit, the governing board
20 may, in its discretion, provide to the comptroller, and file in the of-
21 fice of the clerk, or with the secretary if there is no clerk, of the
22 municipal corporation, industrial development agency, district, agency
23 or activity, a written response to the findings and recommendations, if
24 any, in the report or letter. In the case of municipal corporations, in-
25 dustrial development agency, districts, agencies or activities subject
26 to examination by the commissioner of education, any written response
27 shall also be provided to such commissioner.

28 (2) A written response prepared pursuant to subparagraph one of this
29 paragraph shall be in such form as may be prescribed by the comptroller
30 and shall include, with respect to each finding or recommendation, a
31 statement of the corrective actions taken or proposed to be taken, or if
32 corrective action is not taken or proposed, an explanation of the reasons
33 therefor. Any such written response shall also include a statement
34 on the status of corrective actions taken on findings or recommendations
35 contained in any previous report of examination, or report of an exter-
36 nal audit, or any management letter prepared in conjunction therewith,
37 by an independent public accountant for which a written response was
38 required. All officers and employees of the municipal corporation, in-
39 dustrial development agency, district, agency or activity shall fully
40 cooperate with the governing board in the preparation of the response by
41 the governing board.

42 (c) The provisions of this subdivision shall not apply to any city
43 having a population of one million or more.

44 § 36. Systems of accounts. The state comptroller may formulate and
45 prescribe systems of keeping accounts for the municipal corporations,
46 districts, agencies and activities specified in section thirty of this
47 chapter. The comptroller, from time to time, whenever he shall deem it
48 necessary, may direct the installation of a system of keeping accounts
49 by any one or more of the municipal corporations, industrial development
50 agency, districts, agencies or activities for which such system was for-
51 mulated and prescribed. Any officer who shall refuse or willfully ne-
52 glect to comply with such direction of the comptroller within such reas-
53 onable time as the comptroller may prescribe shall be guilty of a
54 misdemeanor. The comptroller may, however, and upon good and sufficient
55 cause shown shall, extend such prescribed time as may be reasonable and

1 necessary. The expense of installing a system of keeping accounts in
2 pursuance of this section shall be paid out of such appropriation as
3 shall be made to carry this article into effect.

4 § 37. Statistical report of comptroller. The substance of the
5 reports required by the provisions of this article shall be arranged by
6 the comptroller in such form as shall indicate the comparative receipts
7 from the various sources of revenue and the comparative costs of govern-
8 ment in the municipal corporations, industrial development agency, dis-
9 tricts, agencies and activities, and shall be published in an annual
10 statement of comparative statistics for each type or class of municipal
11 corporation, industrial development agency, district, agency or
12 activity. Such statement shall be issued at the expense of the state as
13 a public document and shall be submitted by the comptroller to the
14 legislature at each regular session.

15 § 38. Expense of examination. The expenses of examining the accounts
16 of any municipal corporation, industrial development agency, district,
17 agency or activity shall be paid out of such appropriation as shall be
18 made to carry the provisions of this article into effect.

19 § 3. Subdivision 1 of section 856 of the general municipal law is
20 amended by adding a new paragraph (c) to read as follows:

21 (c) On or before March first of each year, the secretary of state
22 shall prepare a list of agencies which failed to file a certificate in
23 accordance with provisions of paragraph (a) of this subdivision within
24 the preceding calendar year and transmit a copy of such list to the
25 state comptroller and the commissioner of the department of economic
26 development. On or before March first of each year the commissioner of
27 the department of economic development shall prepare a list of agencies
28 which have dissolved pursuant to paragraph (b) of this subdivision or
29 have ceased to exist pursuant to section eight hundred eighty-two of
30 this chapter and shall transmit a copy of such list to the state
31 comptroller.

32 § 4. The general municipal law is amended by adding a new section 859
33 to read as follows:

34 § 859. Financial records. 1. (a) Each agency shall maintain books and
35 records in such form as may be prescribed by the state comptroller.

36 (b) Within ninety days following the close of its fiscal year, each
37 agency shall prepare a financial statement for that fiscal year in such
38 form as may be prescribed by the state comptroller. Such statement shall
39 be audited within such ninety day period by an independent certified pu-
40 blic accountant in accordance with government accounting standards esta-
41 blished by the United States general accounting office. The audited
42 financial statement shall include supplemental schedules listing all
43 bonds and notes issued, outstanding or retired during the applicable ac-
44 counting period whether or not such bonds or notes are considered obli-
45 gations of the agency. For each issue of bonds or notes such schedules
46 shall provide the name of each project financed with proceeds of each
47 issue, name and address of each owner of each project, the amount of tax
48 exemptions granted for each project, purpose for which each bond or note
49 was issued, date of issue, interest rate at issuance and if variable the
50 range of interest rates applicable, maturity date, and federal tax
51 status of each issue.

52 (c) Within thirty days after completion, a copy of the audited finan-
53 cial statement shall be transmitted to the commissioner of the depart-
54 ment of economic development, the state comptroller and the governing
55 body of the municipality for whose benefit the agency was created.

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1 (d) An agency with no bonds or notes issued or outstanding and no
2 projects during the applicable accounting period may apply to the state
3 comptroller for a waiver of the required audited financial statement.
4 Application shall be made on such form as the comptroller may prescribe.
5 2. On or before September first of each year, the commissioner of the
6 department of economic development shall prepare and submit to the gov-
7 ernor, speaker of the assembly, majority leader of the senate, and the
8 state comptroller, a report setting forth a summary of the significant
9 trends in agency operations and financing; departures from acceptable
10 agency practices; a compilation by type of the bonds and notes outstand-
11 ing; and any other information which in the opinion of the commissioner
12 bears upon the discharge of the agency's statutory functions as defined
13 in this chapter.
14 § 5. This act shall take effect immediately except that sections three
15 and four of this act shall take effect of the first day of January next
16 succeeding the date on which it shall have become a law.