

DATED: FEBRUARY 8, 2020

# UCIDA

---

Ulster County Industrial Development Agency  
P. O. Box 4265, Kingston, NY 12402-4265

**February 12, 2020 - 9:00 AM**  
SUNY Ulster – 94 Marys Avenue, Kingston, NY

## **Supplemental Board Packet**

### Table of Contents

1. IDA Legislation Passed by NYS Legislature in 2019 **(page 2)**
2. Ulster County Legislative Prevailing Wage Bill 2020 **(page 8)**
3. Prevailing Wage Legislation – Governor’s Executive Budget **(page 10)**

MEMORANDUM FROM



A. Joseph Scott, III  
Direct Dial: 518.433.2419

**To:** Clients and Friends of the Firm  
**Date:** January 29, 2020  
**Subject:** IDA Legislation Passed by NYS Legislature in 2019

**A. Live Streaming**

Issue	Procedural Requirements	Source
Live Streaming	<p>IDAs obligated to video record all meetings and public hearings, to the extent practicable.</p> <ul style="list-style-type: none"> <li>• Must be streamed in real-time.</li> <li>• Not just meetings, but also public hearings.</li> <li>• Video recordings must be posted on IDA website within 5 business days of the meeting or hearing.</li> <li>• IDA must maintain the recordings for a period of not less than 5 years.</li> <li>• <b>Effective January 1, 2020.</b></li> </ul>	<p>S. Bill 88 A. Bill 3002</p> <p>GML § 857</p>

**B. Authority Budget Office Authorized to Suspend IDA Board Members**

Issue	Procedural Requirements	Source
Suspension of IDA Board Members and Chief Executive Officer	<p>Authority Budget Office (“ABO”) has authority to suspend local IDA board members and chief executive officer (or equivalent).</p> <ul style="list-style-type: none"> <li>• ABO may suspend one or more of IDA members or the chief executive officer.</li> <li>• Suspension is for a period of not more than 90 days.</li> <li>• May suspend if individual “knowingly fails or neglects” to submit any report required by § 2800 of Public Authorities Law within 36 months of it being due.</li> <li>• ABO may terminate any suspension if an IDA board member or chief executive officer demonstrates the remedying of the non-compliance.</li> <li>• “Suspension” means the temporary removal of “rights, responsibilities, powers and duties” of the individual.</li> </ul>	<p>S. Bill 1872 A. Bill 220</p> <p>PAL § 6-a</p>

	<ul style="list-style-type: none"> <li>• “Suspension” means with respect to the full board (if the ABO has suspended all the IDA members (or a majority of such members)), the prohibition from taking actions, votes, or adopting resolutions that bind the IDA to future agreements, contracts, financial commitments, indebtedness, or other actions.</li> <li>• Such suspension does not prohibit the IDA from taking action to resolve the non-compliance or to satisfy existing legal or administrative obligations.</li> <li>• For suspensions involving board members, ABO must provide at least 30 days prior notice of intent to initiate suspension proceedings to the IDA chairperson, to the appointing body, and to each board member.</li> <li>• For suspensions involving the chief executive officer, ABO must provide at least 30 days prior notice of intent to initiate suspension proceedings to the IDA chairperson, and to the chief executive officer.</li> <li>• Notice must include the following: (i) description of the non-compliance, (ii) the number of days of the proposed suspension, (iii) option to submit a formal response to the ABO demonstrating why the board member or chief executive officer should not be suspended, and (iv) if applicable, a period of time in which the IDA can remedy the non-compliance.</li> <li>• If the board member or chief executive officer has not responded to the notice or remedied the non-compliance to the satisfaction of the ABO, the ABO shall issue a notice of suspension, which notice shall include the following information: (i) the number of days of the suspension, and (ii) the date the suspension shall commence (which shall be at least 180 days from the date of issuance of the notice).</li> <li>• Whenever the ABO has suspended a board member, the appointing entity may act to reinstate the suspended board member.</li> <li>• If the appointing entity is a legislative body, any action to reinstate shall occur in a public meeting and following an opportunity for the public to comment, and reinstatement shall be valid upon passage of a resolution duly adopted by a majority of the legislative body, and such resolution shall describe the facts and circumstances by which the legislative body has reached its determination.</li> <li>• There is a similar process if the appointing entity is a chief executive officer of the municipality for whose benefit the IDA was created.</li> </ul>	
--	--	--

	<ul style="list-style-type: none"> <li>• Whenever the ABO has suspended the chief executive officer of the IDA, the IDA chairperson may act to reinstate the suspended chief executive officer.</li> <li>• Any action by an IDA to reinstate a suspended chief executive officer shall occur in a public meeting of the IDA and following an opportunity for the public to comment, and reinstatement shall be valid upon passage of a resolution duly adopted by a majority of the IDA board and such resolution shall describe the facts and circumstances by which the IDA board has reached its determination.</li> <li>• “Reinstatement” shall mean the restoration of the “rights, responsibilities, powers and duties” of a board member or chief executive officer.</li> <li>• <b>Effective the 90<sup>th</sup> day after it shall become a law (Governor signed the bill on August 22, 2019 and became effective on November 20, 2019).</b></li> </ul>	
--	---	--

### C. OSC Audit of Governmentally Controlled Entities

Issue	Procedural Requirements	Source
OSC Audits	<p>The Office of the State Comptroller (“OSC”) has the power to audit various state and local governmental entities, including industrial development agencies.</p> <ul style="list-style-type: none"> <li>• The legislation expands the entities subject to audit by OSC to organizations “controlled” by such entities.</li> <li>• An organization is “deemed under the control” of another entity when individuals that serve as officers or employees of the governmental entity: <ul style="list-style-type: none"> <li>○ select either a majority of the organizations highest policy-making body or the organization’s CEO;</li> <li>○ constitute a majority of the voting strength that selects either a majority of the organization’s highest policy-making body or the organization’s CEO; or</li> <li>○ serve as (i) a majority of the organization’s highest policy-making body, (ii) the organization’s CEO, or (iii) a partner in the organization.</li> </ul> </li> <li>• An organization under the control of one or more governmental entities shall also include any other organization that is controlled by such organization.</li> </ul>	<p>S. Bill 5445 A. Bill 7476</p> <p>GML § 34</p>

	<ul style="list-style-type: none"> <li>In cases involving the audit of a controlled organization, no person shall be compelled to appear or to be examined outside the county where the organization has its principal headquarters.</li> <li><b>Effective December 20, 2019.</b></li> </ul>	
--	--	--

#### **D. Confirmation of IDA Notice Prior to Approval**

<b>Issue</b>	<b>Procedural Requirements</b>	<b>Source</b>
Confirmation of Notice of Project	<p>IDAs are obligated to provide a copy of the resolution adopted pursuant to Section 859-a(1) of the GML to the CEO of each affected local taxing jurisdiction.</p> <ul style="list-style-type: none"> <li>Must be delivered by certified mail, return receipt requested.</li> <li>In the case of a school district, copies must be delivered, by certified mail, return receipt requested, to the school board and the district superintendent.</li> <li><b>Vetoed by the Governor on December 20, 2019.</b></li> </ul>	<p>S. Bill 2769 A. Bill 2947</p> <p>GML § 859-a<sup>1</sup></p>

#### **E. IDA Consideration of Green Energy Issues**

<b>Issue</b>	<b>Procedural Requirements</b>	<b>Source</b>
Adds consideration of resource conservation, energy efficiency, green technologies and alternative and renewable energy measures to Uniform Tax Exemption Polices	<p>IDAs are required to include the following as a guideline in the consideration of the granting of financial assistance under the IDA’s Uniform Tax Exemption Policy:</p> <ul style="list-style-type: none"> <li>the extent to which the project will utilize, to the fullest extent practicable and feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures.</li> <li><b>Effective October 23, 2019.</b></li> </ul>	<p>S. Bill 5609 A. Bill 1606</p> <p>GML § 874<sup>2</sup></p>

<sup>1</sup> Also amends comparable statutes for the Troy Industrial Development Authority and the Auburn Industrial Development Authority.

<sup>2</sup> Also amends comparable statutes for the Troy Industrial Development Authority and the Auburn Industrial Development Authority.

SCHEDULE A  
VETO MESSAGE BY GOVERNOR  
- SEE ATTACHED -

VETO MESSAGE - No. 244

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 2947, entitled:

"AN ACT to amend the general municipal law and the public authorities law, in relation to requiring notice and confirmation of such notice by affected local taxing jurisdictions and school districts prior to approval of projects by industrial development agencies"

NOT APPROVED

This bill would amend General Municipal Law and Public Authorities Law to require Industrial Development Agencies ("IDAs") to send notifications of proposed financial incentives for a project and any reasons for deviation from their uniform tax exemption policy to affected local taxing jurisdictions by certified mail, return receipt requested. If the affected local taxing jurisdiction is a school district, notifications would be required to be sent to the school board and district superintendent of the school district.

IDAs are already required to notify affected tax jurisdictions of proposed financial incentives or any deviation therefrom. The bill's sponsors have not identified what issue this bill is attempting to resolve or how the service of such notifications by certified mail, return receipt requested would remedy that issue. Because this requirement would impose an unnecessary and additional administrative burden upon IDAs, absent clarification of how this amendment would address a specific need, I am constrained to veto this bill.

The bill is disapproved.

(signed) ANDREW M. CUOMO

---

**Reaffirming That The Ulster County Industrial Development Agency (UCIDA) Requires Prevailing Wage And Local Labor Provisions As Requirements For Securing IDA Assistance**

Referred to: The Economic Development, Tourism, Housing, Planning and Transit Committee (Chairman Cahill and Legislators Archer, Corcoran, Delaune, Litts, Maio, and Uchitelle)

Legislators Laura Petit and John Parete offer the following:

WHEREAS, the Ulster County Legislature passed resolution 244 of 2005, Directing The Ulster County Industrial Development Agency (UCIDA) To Adopt Prevailing Wage And Local Labor Provisions As Requirements For Securing IDA Assistance; and

WHEREAS, the Governor’s proposed 2021 budget requires companies receiving public monies to use prevailing wage standards for state projects in some but not all instances; and

WHEREAS, the Ulster County Legislature is committed to ensuring diverse local job creation in our County; and

WHEREAS, the Ulster County Legislature created the Ulster County Industrial Development Agency (UCIDA) in 1976 to “promote, encourage, attract and develop job and business opportunities and economically sound commerce and industry in cities, towns and villages of Ulster County”; and

WHEREAS, the assistance provided by the UCIDA is a substantial benefit to companies who qualify for this assistance; and

WHEREAS, the assistance provided by the UCIDA does comes at a cost to local taxpayers either directly or indirectly; and

WHEREAS, it is the belief of this Legislature that residents of Ulster County deserve to share in the economic benefits as there is a cost to the taxpayer for UCIDA Assistance; and

WHEREAS, the Ulster County Legislature further believes that local labor should first be sought before securing outside labor for UCIDA assisted projects; and

WHEREAS, the Ulster County Industrial Development Agency has adopted similar measures dealing specifically with prevailing wage and local labor that have been found to be legal and proper; now, therefore be it

**Resolution No. 10      February 18, 2020**

**Reaffirming That The Ulster County Industrial Development Agency (UCIDA) Requires Prevailing Wage And Local Labor Provisions As Requirements For Securing IDA Assistance**

RESOLVED, the Ulster County Legislature directs the Ulster County Industrial Development Agency to adopt measures mandating prevailing wage for all construction related labor and to prioritize local labor in this contraction; and, be it further

RESOLVED, the Ulster County Legislature continues its support of resolution 244 of 2005; and, be it further

RESOLVED, the Ulster County Industrial Development Agency shall also begin to track the wages and benefits that companies supported by the IDA provide their workers,

and move its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

Passed Committee: Economic Development, Tourism, Housing, Planning and Transit on \_\_\_\_\_.

FINANCIAL IMPACT:

NONE

MEMORANDUM FROM



A. Joseph Scott, III  
Direct Dial: 518.433.2419

**To:** Clients and Friends of the Firm  
**Date:** January 29, 2020  
**Subject:** Prevailing Wage Legislation – Governor’s Executive Budget

**Summary of Prevailing Wage Provisions – Part FFF**

<b>Requirement:</b>	Each “covered project” shall be subject to the prevailing wage requirements contained in Sections 220 and 220-b of the Labor Law.
<b>Definitions:</b>	<p>“Covered project” shall mean construction work done under contract which is “paid for in whole or in part out of public funds,” where the amount of all such public funds, when aggregated, is at least 30% of the total construction project costs and where such project costs are over five million dollars.</p> <p>“Paid for in whole or in part out of public funds” means:</p> <ul style="list-style-type: none"><li>• Payment of money by a public entity directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment</li><li>• Savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of the tax credits, tax abatements, tax exemptions or tax increment financing; and any other savings from reduced, waived or forgiven costs that would have otherwise been at a higher or market rate but for the involvement of the public entity</li><li>• Money loaned by the public entity that is to repaid on a contingent basis</li><li>• Credits that are applied by the public entity against repayment of obligations to the public entity</li></ul> <p>“Paid for in whole or in part out of public funds” does not mean:</p> <ul style="list-style-type: none"><li>• Benefits under Section 421-a of the Not-for-Profit Law (i.e., exempt status due to not-for-profit status)</li><li>• Funds not provided primarily to promote, incentivize or ensure the construction work is performed</li><li>• Funds used to incentivize or ensure the development of a comprehensive sewage system</li><li>• Tax benefits provided for projects the value of which are not able to be calculated at the time the work is to be performed</li><li>• Any other public monies, credits, savings or loans, determined by the Public Subsidy Board as exempt</li></ul>

“Covered projects” shall not mean:

- Construction work on a 1 or 2 family dwelling
- Construction work performed under a contract with a not-for-profit corporation as defined in Section 102 of the Not-for-Profit Corporation Law, other than a not-for-profit corporation formed exclusively for the purpose of holding title to property and collecting income thereof or a local development corporation under Section 1411 of the Not-for-Profit Corporation Law, where the not-for-profit corporation has gross annual revenue and support less than \$5,000,000
- Construction work on multiple residents and/or ancillary installations for the following:
  - Where no less than 30% of the residential units are affordable for households up to 80% of the area median income, or
  - Where no less than 35% of the residential units involve the provision of supportive housing services for vulnerable populations, or
  - Where construction work is performed on buildings paid for in whole or in part out of public funds on affordable units subject to a regulatory agreement with a local, state or federal governmental body, or
  - Any other affordable or subsidized housing as determined by the Public Subsidy Board
- Construction work performed on a manufactured home park
- Construction work performed under a pre-hire collective bargaining agreement (e.g., a project labor agreement)
- Construction work performed on projects funded by Urban Development Corporation Act or the DRI program
- Construction work performed in connection with the installation of a renewable energy system, renewable heating or cooling system or energy storage system, with a capacity equal to 5 megawatts or under
- Construction work performed on supermarket retail space built or renovated with tax incentives provided under the food retail expansion to support health (FRESH) program
- Construction work for interior fit-outs and improvements under 10,000 square feet of space under the small business incubation programs
- Construction work on space to be used as a school under 20,000 square feet of space
- Construction work performed on projects that received tax benefits related to brownfield remediation, brownfield redevelopment or historic rehabilitation

“Public entity” shall include, but not be limited to, the state, a local development corporation, a municipal corporation, an industrial development agency, or industrial development authorities, and any state, local or interstate or international authorities as defined in Section 2 of the Public Authorities Law.

	<p>“Construction” means work which shall be as defined by the Public Subsidy Board to require payment of prevailing wage, and which may involve the employment of laborers, workers or mechanics.</p>
<b>Enforcement:</b>	<p>The enforcement of any construction work deemed to be a “covered project” shall be subject to requirements of Sections 220, 224-b, 224-c and 220-b of the Labor Law.</p> <ul style="list-style-type: none"> <li>• Owner or developer of such covered project shall certify under penalty of perjury within 5 days of commencement of construction whether the project is subject to these requirements</li> <li>• Owner or developer may seek guidance from the Public Subsidy Board</li> <li>• Owner or developer must retain original payroll records</li> <li>• Public entity providing any of the public funds shall identify the nature and dollar value of such funds (and whether such funds are excluded from such determination)</li> <li>• Commissioner may issue rules regarding these provisions</li> </ul>
<b>Minority and Women-Owned Business Enterprises</b>	<p>Owners and developer subject to the requirements of these provisions shall comply with the objectives and goals of minority and women-owned business enterprise under Article 15-A of the Executive Law.</p> <p>The Commissioner shall report to the Governor, the Senate Pro Temp and the Assembly Speaker on the participation of minority and women-owned business enterprises in relation to covered projects.</p>
<b>Public Subsidy Board</b>	<p>A board on public subsidies is to be created to consist of eleven members.</p> <p>The eleven members are appointed by the Governor, and shall consist of the following: one member upon recommendation of the Senate Pro Temp, one member upon recommendation of the Assembly Speaker, the Commissioner of Labor, the President of the Empire State Development Corporation, the Director of the Division of the Budget, one person representing employees in the construction industry, and one person representing employers in the construction industry.</p> <p>The members shall serve at the pleasure of the authority appointing such member.</p> <p>The board may examine and make recommendations which shall have the full force and effect of law:</p> <ul style="list-style-type: none"> <li>• The minimum threshold percentage of public funds</li> <li>• The minimum dollar threshold of projects</li> <li>• The construction work excluded as a “covered project”</li> <li>• The definition of “construction”</li> <li>• Particular instances of benefits, monies or credits as to whether or not they should constitute “public funds”</li> </ul>

	<p>In making its recommendations, the Public Subsidy Board shall examine the impact of such thresholds and circumstances on private development in light of available public subsidies, existing labor market conditions, prevailing wages, and the extent such adjustments could mitigate adverse impacts.</p> <p>The Public Subsidy Board is empowered to issue binding determinations, based on documents or testimony, or both, and in its sole discretion.</p> <p>Any determination issued by a Public Subsidy Board shall be final and may not be appealed to the Commissioner, nor shall any private right of action accrue to any individual.</p>
<b>Effective Date:</b>	<p>July 1, 2021 and shall apply to contracts for construction executed, incentive agreements executed, procurements or solicitations issued, or applications for building permits on or after such date, provided however that the Act shall not apply to any appropriations of public funds made prior to such date, or to reappropriations of such funds first appropriated prior to such date.</p>