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I N   S E N A T E

May 3, 2010

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Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the local finance law, in relation to the sale of bonds and notes of the city of New York, the refunding of bonds, the down payment for projects financed by bonds, variable rate debt, and interest rate exchange agreements of the city of New York; to amend the New York state financial emergency act for the city of New York, in relation to a pledge and agreement of the state; and to amend chapter 142 of the laws of 2004, amending the local finance law relating to interest rate exchange agreements of the city of New York and refunding bonds of such city, in relation to the effectiveness thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The opening paragraph of paragraph (a) of section 54.10 of  
2     the local finance law, as amended by chapter 184 of the laws of 2009, is  
3     amended to read as follows:  
4     To facilitate the marketing of any issue of bonds or notes of the city  
5     of New York issued on or before June thirtieth, two thousand [ten] ELEVEN,  
6     the mayor and comptroller of such city may, subject to the approval  
7     of the state comptroller and the limitations on private sales of bonds  
8     and notes, respectively, provided by law:  
9     S 2.     The opening paragraph of paragraph a of section 57.00 of the  
10    local finance law, as amended by chapter 184 of the laws of 2009, is  
11    amended to read as follows:  
12    Bonds shall be sold only at public sale and in accordance with the  
13    procedure set forth in this section and sections 58.00 and 59.00 of this  
14    title, except as otherwise provided in this paragraph. Bonds may be sold  
15    at private sale to the United States government or any agency or instrumentality  
16    thereof, the state of New York municipal bond bank agency, to  
17    any sinking fund or pension fund of the municipality, school district or  
18    district corporation selling such bonds, or, in the case of sales by the  
19    city of New York prior to July first, two thousand [ten] ELEVEN, also to  
20    the municipal assistance corporation for the city of New York or to any  
21    other purchaser with the consent of the mayor and the comptroller of

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

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1 such city and approval of the state comptroller, or, in the case of  
2 sales by the county of Nassau prior to December thirty-first, two thou-  
3 sand seven, also to the Nassau county interim finance authority with the  
4 approval of the state comptroller, or, in the case of sales by the city  
5 of Buffalo prior to June thirtieth, two thousand thirty-seven, also to  
6 the Buffalo fiscal stability authority with the approval of the state  
7 comptroller, or, in the case of bonds or other obligations of a munici-  
8 pality issued for the construction of any sewage treatment works, sewage  
9 collecting system, storm water collecting system, water management  
10 facility, air pollution control facility or solid waste disposal facili-  
11 ty, also to the New York state environmental facilities corporation, or,  
12 in the case of bonds or other obligations of a school district or a city  
13 acting on behalf of a city school district in a city having a population  
14 in excess of one hundred twenty-five thousand but less than one million  
15 inhabitants according to the latest federal census, issued to finance or  
16 refinance the cost of school district capital facilities or school  
17 district capital equipment, as defined in section sixteen hundred seven-  
18 ty-six of the public authorities law, also to the dormitory authority of  
19 the state of New York. Bonds of a river improvement or drainage district  
20 established by or under the supervision of the department of environ-  
21 mental conservation may be sold at private sale to the [State] STATE of  
22 New York as investments for any funds of the state which by law may be  
23 invested, provided, however, that the rate of interest on any such bonds  
24 so sold shall be approved by the water power and control commission and  
25 the state comptroller. Bonds may also be sold at private sale as  
26 provided in section 63.00 of this title. No bonds shall be sold on  
27 option or on a deferred payment plan, except that options to purchase,  
28 effective for a period not exceeding one year, may be given:

29 S 3. Subdivision 3 of paragraph g of section 90.00 of the local  
30 finance law, as amended by chapter 184 of the laws of 2009, is amended  
31 to read as follows:

32 3. Outstanding bonds may, pursuant to a power to recall and redeem or  
33 with the consent of the holders thereof, be exchanged for refunding  
34 bonds (i) if the refunding bonds are to bear interest at a rate equal to  
35 or lower than that borne by the bonds to be refunded or (ii) if, in the  
36 case of the city of New York prior to July first, two thousand [ten]  
37 ELEVEN, the annual payment required for principal and interest on the  
38 refunding bond is less than the annual payment required for principal  
39 and interest on the bond to be refunded, in each case such annual  
40 payments to be determined by dividing the total principal and interest  
41 payments due over the remaining life of the bond by the number of years  
42 to maturity of the bond or (iii) if the bonds to be refunded were issued  
43 by the city of New York after June thirtieth, nineteen hundred seventy-  
44 eight and prior to July first, two thousand [ten] ELEVEN and contain  
45 covenants referring to the existence of the New York state financial  
46 control board for the city of New York or any other covenants relating  
47 to matters other than the prompt payment of principal and interest on  
48 the obligations when due and the refunding bond omits or modifies any  
49 such covenant.

50 S 4. Subdivision 8 of paragraph d of section 107.00 of the local  
51 finance law, as amended by chapter 184 of the laws of 2009, is amended  
52 to read as follows:

53 8. Notwithstanding any other provision of law, the financing by the  
54 city of New York prior to July first, two thousand [ten] ELEVEN of any  
55 object or purpose which has a period of probable usefulness determined  
56 by law by the issuance of any bonds or notes, including (i) the issuance

1 of bonds or notes to obtain reimbursement for funds heretofore advanced  
2 for the object or purpose for which the bonds or notes are being issued,  
3 (ii) the issuance of bonds or notes to redeem notes previously issued  
4 for the object or purpose for which the bonds or notes are being issued  
5 or (iii) the issuance of bonds to refund bonds previously issued for the  
6 object or purpose for which bonds are being issued.

7 S 5. The closing paragraph of paragraph a of section 54.90 of the  
8 local finance law, as amended by chapter 184 of the laws of 2009, is  
9 amended to read as follows:

10 Notwithstanding the foregoing, whenever in the judgment of the finance  
11 board of the city of New York the interest of such city would be served  
12 thereby, the city of New York may without further approval issue bonds  
13 or notes, on or before July fifteenth, two thousand [ten] ELEVEN, with  
14 interest rates that vary in accordance with a formula or procedure and  
15 are subject to a maximum rate of interest set forth or referred to in  
16 the bonds or notes and may provide the holders thereof with such rights  
17 to require the city or other persons to purchase such bonds or notes or  
18 renewals thereof from the proceeds of the resale thereof or otherwise  
19 from time to time prior to the final maturity of such bonds or notes as  
20 the finance board of the city of New York may determine and the city may  
21 resell, at any time prior to final maturity, any such bonds or notes  
22 acquired as a result of the exercise of such rights; provided, however,  
23 that at no time shall the total principal amount of bonds and notes  
24 issued by the city of New York pursuant to this paragraph (other than  
25 bonds and notes (1) bearing interest at rates and for periods of time  
26 that are specified without reference to future events or contingencies,  
27 or (2) described in section 136.00 of this article) exceed twenty-five  
28 percent of the limit prescribed by section 104.00 of this article.

29 S 6. The opening paragraph of subdivision 1 of paragraph d of section  
30 54.90 of the local finance law, as amended by chapter 184 of the laws of  
31 2009, is amended to read as follows:

32 On or before July fifteenth, two thousand [ten] ELEVEN the mayor and  
33 comptroller of the city of New York may:

34 S 7. Subdivision 1 of section 10-a of section 2 of chapter 868 of the  
35 laws of 1975, constituting the New York state financial emergency act  
36 for the city of New York, as amended by chapter 184 of the laws of 2009,  
37 is amended to read as follows:

38 1. In the event that after the date on which the provisions of this  
39 act become operative, any notes or bonds are issued by the city prior to  
40 July 1, [2010] 2011, or any bonds are issued by a state financing agen-  
41 cy, the state of New York hereby authorizes the city and authorizes and  
42 requires such state financing agency to include a pledge and agreement  
43 of the state of New York in any agreement made by the city or such state  
44 financing agency with holders or guarantors of such notes or bonds that  
45 the state will not take any action which will (a) substantially impair  
46 the authority of the board during a control period, as defined in subdi-  
47 vision twelve of section two of this act as in effect on the date such  
48 notes or bonds are issued (i) to approve, disapprove, or modify any  
49 financial plan or financial plan modification, including the revenue  
50 projections (or any item thereof) contained therein, subject to the  
51 standards set forth in paragraphs a, c, d, e and f of subdivision one of  
52 section eight of this act as in effect on the date such notes or bonds  
53 are issued and paragraph b of such subdivision as in effect from time to  
54 time, (ii) to disapprove a contract of the city or a covered organiza-  
55 tion if the performance of such contract would be inconsistent with the  
56 financial plan or to approve or disapprove proposed short-term or long-

1 term borrowing of the city or a covered organization or any agreement or  
2 other arrangement referred to in subdivision four of section seven of  
3 this act, or (iii) to establish and adopt procedures with respect to the  
4 deposit in and disbursement from the board fund of city revenues; (b)  
5 substantially impair the authority of the board to review financial  
6 plans, financial plan modifications, contracts of the city or the  
7 covered organizations and proposed short-term or long-term borrowings of  
8 the city and the covered organizations; (c) substantially impair the  
9 independent maintenance of a separate fund for the payment of debt  
10 service on bonds and notes of the city; (d) alter the composition of the  
11 board so that the majority of the voting members of the board are not  
12 officials of the state of New York elected in a state-wide election or  
13 appointees of the governor; (e) terminate the existence of the board  
14 prior to the time to be determined in accordance with section thirteen  
15 of this act as in effect on the date such notes or bonds are issued; (f)  
16 substantially modify the requirement that the city's financial state-  
17 ments be audited by a nationally recognized independent certified public  
18 accounting firm or consortium of firms and that a report on such audit  
19 be furnished to the board; or (g) alter the definition of a control  
20 period set forth in subdivision twelve of section two of this act, as in  
21 effect on the date such notes or bonds are issued, or substantially  
22 alter the authority of the board, as set forth in said subdivision to  
23 reimpose or terminate a control period; provided, however, that the  
24 foregoing pledge and agreement shall be of no further force and effect  
25 if at any time (i) there is on deposit in a separate trust account with  
26 a bank, trust company or other fiduciary sufficient moneys or direct  
27 obligations of the United States or obligations guaranteed by the United  
28 States, the principal of and/or interest on which will provide moneys to  
29 pay punctually when due at maturity or prior to maturity by redemption,  
30 in accordance with their terms, all principal of and interest on all  
31 outstanding notes and bonds of the city or such state financing agency  
32 containing this pledge and agreement and irrevocable instructions from  
33 the city or such state financing agency to such bank, trust company or  
34 other fiduciary for such payment of such principal and interest with  
35 such moneys shall have been given, or (ii) such notes and bonds, togeth-  
36 er with interest thereon, have been paid in full at maturity or have  
37 otherwise been refunded, redeemed, defeased, or discharged; and provided  
38 further that the foregoing pledge and agreement shall be of full force  
39 and effect upon its inclusion in any agreement made by the city or state  
40 financing agency with holders or guarantors of such notes or bonds.

41 Upon payment for such obligations issued pursuant to this act by the  
42 original and all subsequent holders inclusion of the foregoing covenant  
43 shall be deemed conclusive evidence of valuable consideration received  
44 by the state and city for such covenant and of reliance upon such pledge  
45 and agreement by any such holder. The state hereby grants any such bene-  
46 fitted holder the right to sue the state in a court of competent juris-  
47 diction and enforce this covenant and agreement and waives all rights of  
48 defense based on sovereign immunity in such an action or suit.

49 S 8. Section 5 of chapter 142 of the laws of 2004, amending the local  
50 finance law relating to interest rate exchange agreements of the city of  
51 New York and refunding bonds of such city, as amended by chapter 184 of  
52 the laws of 2009, is amended to read as follows:

53 S 5. This act shall take effect immediately, provided, that section  
54 three of this act shall expire and be deemed repealed July 15, [2010]  
55 2011.

1     S 9. Separability. If any clause, sentence, paragraph, section or part  
2 of this act shall be adjudged by any court of competent jurisdiction to  
3 be invalid, such judgment shall not affect, impair or invalidate the  
4 remainder thereof, but shall be confined in its operation to the clause,  
5 sentence, paragraph, section or part thereof directly involved in the  
6 controversy in which such judgment shall have been rendered.

7     S 10. This act shall take effect immediately.