S T A T E O F N E W Y O R K

10408

I N A S S E M B L Y

March 24, 2010

Introduced by M. of A. SILVER, FARRELL -- read once and referred to the Committee on Ways and Means

AN ACT to amend the state finance law, in relation to the financial recovery act of 2010

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

Section 1. The state finance law is amended by adding a new article 3-A to read as follows:

ARTICLE III-A

FINANCIAL RECOVERY ACT OF 2010

SECTION 30. FINANCIAL RECOVERY ACT OF 2010.

S 30. FINANCIAL RECOVERY ACT OF 2010. 1. DEFINITIONS. AS USED IN THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING DEFINITIONS:

(A) "FISCAL RECOVERY PERIOD" MEANS THE FIVE CONSECUTIVE STATE FISCAL YEARS WHICH SHALL COMMENCE WITH THE YEAR IN WHICH TRANSITION BONDS ARE FIRST ISSUED.

(B) "BOARD" MEANS THE FINANCIAL REVIEW BOARD CREATED BY SUBDIVISION TWO OF THIS SECTION.

(C) "QUARTERLY FINANCIAL PLAN" MEANS, COLLECTIVELY, THE INITIAL CURRENT YEAR PLAN AND FIVE YEAR PLAN SUBMITTED TO THE FINANCIAL REVIEW BOARD PURSUANT TO SUBDIVISION ONE-D OF SECTION TWENTY-TWO OF THIS CHAPTER AND EACH SUBSEQUENT QUARTERLY UPDATE THERETO.

(D) "TRANSITION BONDS" MEANS THE BONDS ISSUED PURSUANT TO SECTION SIXTY-EIGHT-D OF THIS CHAPTER.

(E) "MODIFIED GAAP-BASIS" MEANS AN ACCRUAL ACCOUNTING SYSTEM OF GOVERNMENT ACCOUNTING ADOPTED BY THE STATE OF NEW YORK FOR BUDGETING UPON ADVICE OF THE BOARD AND THE STATE COMPTROLLER AND APPROVAL OF THE DIRECTOR OF THE BUDGET, CHAIR OF THE SENATE FINANCE COMMITTEE AND CHAIR OF THE ASSEMBLY WAYS AND MEANS COMMITTEE.

(F) "BUDGET IMBALANCE" MEANS EITHER A PROJECTED ANNUAL CASH-BASIS IMBALANCE OR A SUBSTANTIAL LIKELIHOOD THAT A MODIFIED GAAP-BASIS IMBALANCE WILL EXIST AT THE END OF THE FISCAL RECOVERY PERIOD.

2. FINANCIAL RECOVERY REVIEW BOARD. THERE IS HEREBY CREATED THE FINANCIAL RECOVERY REVIEW BOARD WHICH SHALL CONSIST OF FIVE MEMBERS WHO ARE

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

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NOT OFFICERS OR EMPLOYEES OF THE STATE AND HAVE NO BUSINESS WITH THE STATE.

(A) TWO MEMBERS SHALL BE APPOINTED BY THE GOVERNOR, AND ONE MEMBER EACH SHALL BE APPOINTED BY THE COMPTROLLER, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY. EACH BOARD MEMBER SHALL BE A PERSON RECOGNIZED AS HAVING BUSINESS OR PROFESSIONAL EXPERIENCE AND AUTHORITY ON THE FIELDS OF BUDGETING, ACCOUNTING AND FINANCE. EACH MEMBER SHALL SERVE FOR A RENEWABLE TERM OF FIVE YEARS AND MAY BE REMOVED ONLY FOR CAUSE. MEMBERS OF THE BOARD SHALL RECEIVE NO COMPENSATION BUT WILL BE ENTITLED TO REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES UNDER THIS ARTICLE.

(B) THE BOARD MAY ACT ONLY BY A MAJORITY VOTE OF THE ENTIRE BOARD THEN IN OFFICE.

(C) THE BOARD SHALL HAVE AN EXECUTIVE DIRECTOR WHO SHALL BE AUTHORIZED TO HIRE ADDITIONAL STAFF.

3. AUTHORITY OF THE FINANCIAL REVIEW BOARD. THE FINANCIAL REVIEW BOARD CREATED BY SUBDIVISION TWO OF THIS SECTION SHALL, DURING THE REFERENCED PERIODS, HAVE THOSE POWERS AND DUTIES AS ARE DESCRIBED AND DELINEATED FOR EACH SUCH PERIOD:

(A) DURING THE FIRST STATE FISCAL YEAR OF THE FISCAL RECOVERY PERIOD, UPON RECEIPT OF THE QUARTERLY FINANCIAL PLAN, THE BOARD SHALL, WITHIN SEVEN DAYS, PROVIDE ADVICE TO THE DIRECTOR OF THE BUDGET, THE CHAIR OF THE SENATE FINANCE COMMITTEE AND THE CHAIR OF THE ASSEMBLY WAYS AND MEANS COMMITTEE, OR THEIR DESIGNEES, CONCERNING PRESENT "CASH-BASIS" BALANCED BUDGET ISSUES AND INCREMENTAL STEPS IN MOVEMENT TOWARD ACHIEVING A "GAAP-BASIS" BALANCED BUDGET BY THE END OF THE FISCAL RECOVERY PERIOD.

(B) DURING THE SECOND THROUGH FIFTH STATE FISCAL YEARS OF THE FISCAL RECOVERY PERIOD, UPON RECEIPT OF THE QUARTERLY FINANCIAL PLAN, THE BOARD SHALL, WITHIN SEVEN DAYS, DETERMINE IF THE SUBMITTED QUARTERLY FINANCIAL PLAN DISCLOSES A BUDGET IMBALANCE. IF THE BOARD DETERMINES THAT THE CURRENT YEAR PORTION OF THE QUARTERLY FINANCIAL PLAN SUBMITTED DURING EITHER THE FIRST OR THIRD QUARTER OF A STATE FISCAL YEAR DISCLOSES AN IMBALANCE, IT SHALL BE EMPOWERED TO REQUIRE THAT THE FOLLOWING ACTIONS BE UNDERTAKEN TO THE EXTENT NECESSARY TO RECTIFY THE IMBALANCE: (I) THE BOARD WILL ADVISE THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY OF THEIR FINDINGS AND WILL MAKE RECOMMENDATIONS CONCERNING ACTIONS TO RECTIFY SUCH IMBALANCE; (II) WITHIN THIRTY DAYS, THE GOVERNOR WILL EITHER TAKE SUCH ACTIONS AS ARE WITHIN HIS OR HER CONSTITUTIONAL POWERS TO RECTIFY SUCH IMBALANCE OR WILL PROVIDE NOTIFICATION TO THE TEMPORARY PRESIDENT OF THE SENATE AND SPEAKER OF THE ASSEMBLY THAT SUCH IMBALANCE CANNOT BE RECTIFIED BY EXECUTIVE ACTION AND REQUIRES AMENDMENT OF EXISTING LEGISLATION INCLUDING BUT NOT LIMITED TO APPROPRIATIONS; (III) UPON SUCH NOTIFICATION, THE GOVERNOR AND THE LEGISLATURE SHALL ATTEMPT TO OBTAIN PASSAGE OF LEGISLATION WHICH IS MUTUALLY AGREED UPON AS NECESSARY TO RECTIFY SUCH IMBALANCE; AND (IV) IF PASSAGE OF SUCH LEGISLATION CANNOT BE ACHIEVED WITHIN THIRTY DAYS FROM THE DATE UPON WHICH THE GOVERNOR PROVIDED NOTIFICATION TO THE TEMPORARY PRESIDENT AND THE SPEAKER, THE DIRECTOR OF THE BUDGET, UPON CONSULTATION WITH THE COMPTROLLER, THE CHAIR OF THE SENATE FINANCE COMMITTEE AND THE CHAIR OF THE ASSEMBLY WAYS AND MEANS COMMITTEE, WILL BE EMPOWERED TO EXERCISE HIS OR HER POWERS TO SEGREGATE BUDGETED APPROPRIATIONS AS IF A SUFFICIENT PRO RATA REDUCTION TO RECTIFY SUCH IMBALANCE HAD BEEN IMPLEMENTED VIA AMENDMENTS TO ALL STATE FISCAL YEAR APPROPRIATIONS EXCEPT APPROPRIATIONS REQUIRED TO PAY DEBT SERVICE OR

APPROPRIATIONS FOR THE OPERATION OF THE LEGISLATIVE AND JUDICIAL BRANCHES OF STATE GOVERNMENT.

(C) AFTER THE RECOVERY PERIOD AND UNTIL THE DEFEASANCE OF ALL TRANSITION BONDS, THE BOARD SHALL RECEIVE AND REVIEW QUARTERLY FINANCIAL PLANS AND PROVIDE BUDGETING ADVICE, AS THE BOARD MAY DEEM NECESSARY OR DESIRABLE ON AN ONGOING BASIS TO THE DIRECTOR OF THE BUDGET, THE CHAIR OF THE SENATE FINANCE COMMITTEE, AND THE CHAIR OF THE ASSEMBLY WAYS AND MEANS COMMITTEE UNLESS THREE CONSECUTIVE QUARTERLY FINANCIAL PLANS DISCLOSE A BUDGET IMBALANCE. IN THE EVENT THAT THERE ARE TWO CONSECUTIVE QUARTERS OF BUDGET IMBALANCE, THE BOARD WILL BE EMPOWERED TO EXERCISE ALL OF THE POWERS DESCRIBED IN PARAGRAPH (B) OF THIS SUBDIVISION UNTIL SUCH TIME AS TWO CONSECUTIVE QUARTERLY FINANCIAL PLANS ARE DETERMINED TO BE NOT IMBALANCED.

S 2. Section 24 of the state finance law is amended by adding a new subdivision 6 to read as follows:

6. UNLESS DIRECTLY, EXPRESSLY AND SPECIFICALLY ADDRESSED BY PROPOSED LEGISLATION SUBMITTED AS PART OF A SIMULTANEOUSLY-INTRODUCED BUDGET BILL, NO APPROPRIATION OR REAPPROPRIATION SUBMITTED BY THE GOVERNOR IN A BUDGET BILL MAY: (A) ALTER OR IMPAIR EXISTING STATUTORY OR DECISIONAL LAW IN MORE THAN A MINOR INCIDENTAL MANNER; (B) DEPART SUBSTANTIALLY FROM THE FORM OF APPROPRIATIONS HISTORICALLY AND CUSTOMARILY PROPOSED IN EXECUTIVE BUDGETS SINCE THE NINETEEN HUNDRED TWENTY-SEVEN AMENDMENTS TO THE STATE FINANCES ARTICLE OF THE CONSTITUTION; (C) DEVIATE FROM FAMILIAR LINE-ITEM FORMAT; (D) AFFECT ANY CHANGE TO THE STRUCTURE OR ORGANIZATION OF GOVERNMENT; OR (E) EXCEPT AS PROVIDED IN SECTION FORTY OF THIS CHAPTER, AFFECT THE OPERATION OF EXISTING STATUTES BEYOND THE FISCAL YEAR FOR WHICH SUCH APPROPRIATION OR REAPPROPRIATION IS PROPOSED.

S 3. Subdivision 1 of section 22 of the state finance law, as amended by chapter 762 of the laws of 1992, is amended and a new subdivision 1-d is added to read as follows:

1. include (A) BOTH THE CURRENT YEAR PLAN AND A FIVE YEAR FINANCIAL PLAN THAT EMPLOYS MODIFIED GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, IDENTIFIES CURRENT AND FUTURE YEAR FISCAL IMBALANCES, AND PROPOSES MEASURES TO ADDRESS SUCH IMBALANCES; AND (B) a summary financial plan showing for each of the governmental fund types: [(a)] (I) the disbursements estimated to be made before the close of the current fiscal year and the moneys estimated to be available from receipts and other sources therefor; and [(b)] (II) the disbursements proposed to be made during the ensuing fiscal year, and the moneys estimated to be available from receipts and other sources therefor inclusive of any receipts which are expected to result from proposed legislation which he OR SHE deems necessary to provide receipts sufficient to meet such proposed disbursements. For the purposes of this summary financial plan, disbursements shall be presented by the following purposes: state purposes, local assistance, capital projects, debt service, and general state charges; receipts shall be presented for each fund type by each revenue source which accounts for at least one per centum of all such receipts and otherwise by categories of revenue sources; receipts and disbursements for special revenue funds shall be presented separately for federal funds and all other special revenue funds. Whenever receipts or disbursements are proposed to be moved to a different fund type, each significant amount so moved shall be identified.

1-D. PROVIDE THAT QUARTERLY UPDATES TO BOTH THE CURRENT YEAR AND THE FIVE YEAR FINANCIAL PLANS REQUIRED BY PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION SHALL BE SUBMITTED TO THE CHAIRS OF THE SENATE FINANCE COMMITTEE AND THE ASSEMBLY WAYS AND MEANS COMMITTEE, AND TO THE MEMBERS

OF THE FINANCIAL RECOVERY REVIEW BOARD WITHIN TEN DAYS AFTER THE COMMENCEMENT OF EACH QUARTER OF THE STATE FISCAL YEAR.

S 4. Subdivision 1 of section 67-a of the state finance law, as added by chapter 59 of the laws of 2000, is amended to read as follows:

1. "State-supported debt" shall mean any bonds or notes, including bonds or notes issued to fund reserve funds and costs of issuance, issued by the state or a state public corporation for which the state is constitutionally obligated to pay debt service or is contractually obligated to pay debt service subject to an appropriation, except where the state has a contingent contractual obligation. NOTWITHSTANDING THE PROVISIONS OF THIS ARTICLE, ANY BONDS AND NOTES CONTRACTED UNDER THE FINANCIAL RECOVERY ACT OF 2010 SHALL BE EXCLUDED FROM THE DEFINITION OF "STATE-SUPPORTED DEBT".

S 5. Subdivision 2 of section 68-a of the state finance law, as amended by section 56-a of part PP of chapter 56 of the laws of 2009, is amended to read as follows:

2. "Authorized purpose" for purposes of this article and section ninety-two-z of this chapter shall mean any purposes for which state-supported debt, as defined by section sixty-seven-a of this chapter, may or has been issued except debt for which the state is constitutionally obligated thereunder to pay debt service and related expenses, and except (a) as authorized in paragraph (b) of subdivision one of section three hundred eighty-five of the public authorities law, (b) as authorized for the department of health of the state of New York facilities as specified in paragraph a of subdivision two of section sixteen hundred eighty of the public authorities law, (c) state university of New York dormitory facilities as specified in subdivision eight of section sixteen hundred seventy-eight of the public authorities law, [and] (d) as authorized for mental health services facilities by section nine-a of section one of chapter three hundred ninety-two of the laws of nineteen hundred seventy-three constituting the New York state medical care facilities financing act, AND (E) AS AUTHORIZED FOR THE FINANCIAL RECOVERY ACT OF 2010 BY SECTION THIRTY OF THIS CHAPTER. Notwithstanding the provisions of clause (d) of this subdivision, for the period April first, two thousand nine through March thirty-first, two thousand ten, mental health services facilities, as authorized by section nine-a of section one of chapter three hundred ninety-two of the laws of nineteen hundred seventy-three constituting the New York state medical care facilities financing act, shall constitute an authorized purpose.

S 6. The state finance law is amended by adding a new section 68-d to read as follows:

S 68-D. ISSUANCE OF BONDS AND NOTES; FINANCIAL RECOVERY ACT OF 2010.

1. NOTWITHSTANDING ARTICLE FIVE-B OF THIS CHAPTER, THE AUTHORITIES SET FORTH IN SUBDIVISION ONE OF SECTION SIXTY-EIGHT-A OF THIS ARTICLE SHALL HAVE THE POWER AND ARE HEREBY AUTHORIZED FROM TIME TO TIME TO ISSUE REVENUE BONDS IN SUCH PRINCIPAL AMOUNTS SUBJECT TO THE PROVISION OF PARAGRAPH A OF SUBDIVISION ONE OF SECTION TWENTY-TWO OF THIS CHAPTER. THE STATE SHALL HAVE THE POWER TO ENTER INTO AGREEMENTS WITH AUTHORIZED ISSUERS TO ISSUE BONDS AND NOTES TO ADDRESS IMBALANCES IN A FISCAL YEAR.

2. THE AUTHORIZED ISSUER MAY ISSUE IN ANY FISCAL YEAR BONDS AND NOTES FOR THE EMERGENCY OR EXTRAORDINARY FACTORS OR FACTORS UNANTICIPATED AT THE TIME OF ADOPTION OF THE BUDGET FOR THE FISCAL YEAR IN WHICH SUCH BORROWING IS TO BE MADE THAT GAVE RISE TO THE NEED FOR THE ISSUANCE OF BONDS AND NOTES.

3. THE AMOUNT OF BONDS AND NOTES ISSUED IN EACH OF THE THREE FISCAL YEARS DURING THE FIVE YEAR PLAN SHALL BE ELIMINATED AS SOON AS PRACTICABLE.

4. THE NET PROCEEDS OF THE BONDS AND ANY EARNINGS THEREON SHALL NEVER BE PLEDGED TO, NOR MADE AVAILABLE FOR, PAYMENT OF THE BONDS OR ANY INTEREST OR REDEMPTION PRICE THEREON OR ANY OTHER DEBT OR OBLIGATION OF THE AUTHORIZED ISSUERS. THE NET PROCEEDS OF THE BONDS SHALL BE DEPOSITED AS DIRECTED BY THE DIRECTOR OF THE BUDGET TO THE FINANCIAL RECOVERY ACT BOND PROCEEDS FUND ESTABLISHED PURSUANT TO SECTION NINETY-TWO-H OF THIS CHAPTER AS SPECIFIED IN, OR OTHERWISE PROVIDED FOR BY, THE SALE AGREEMENT, AND SHALL BE USED BY THE STATE (EITHER DIRECTLY OR BY REIMBURSEMENT OF THE GENERAL FUND) FOR ANY OF THE FOLLOWING PURPOSES: (I) FOR HEALTH CARE PURPOSES, (II) FOR ANY OF ITS CAPITAL PURPOSES OR FOR ANY OF ITS CAPITAL PROGRAMS, (III) FOR PAYMENT OF DEBT SERVICE ON ANY OF ITS OUTSTANDING BONDS OR ON ANY STATE SUPPORTED BONDS, NOTES OR OTHER OBLIGATIONS OR IN RESPECT OF DEBT SERVICE ON ANY OUTSTANDING BONDS, NOTES OR OTHER OBLIGATIONS OF LOCAL GOVERNMENTS, SCHOOL DISTRICTS OR PUBLIC BENEFIT CORPORATIONS FOR WHICH STATE AID IS APPLICABLE OR REQUIRED TO BE PAID OR FOR WHICH THERE IF A CONTRACT SUBJECT TO STATE APPROPRIATION PROVIDED THAT SUCH BONDS, NOTES OR OTHER OBLIGATIONS FUNDED CAPITAL PROJECTS OR PROGRAMS, (IV) FOR OTHER GRANTS TO LOCAL GOVERNMENTS, SCHOOL DISTRICTS OR PUBLIC BENEFIT CORPORATIONS, OR (V) TO PROVIDE A REVENUE RESOURCE FOR PERSONAL SERVICE EXPENSES OF THE STATE AND GENERAL STATE CHARGES.

5. SUCH BONDS SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF ARTICLE ONE-A OF THE PUBLIC AUTHORITIES LAW.

6. BONDS OR NOTES ISSUED PURSUANT TO THIS SECTION SHALL NOT EXCEED TEN YEARS IN MATURITY.

7. SUCH BONDS OR NOTES AMOUNT ISSUED SHALL NOT EXCEED MORE THAN TEN PERCENT OF THE FIVE YEAR CUMULATIVE DEFICIT PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION TWENTY-TWO OF THIS CHAPTER AND SHALL NOT EXCEED TWO BILLION DOLLARS IN ANY GIVEN YEAR.

8. THE STATE SHALL NOT ENTER INTO AGREEMENTS WITH AUTHORIZED ISSUERS TO BORROW TO FINANCE STATE OPERATING DEFICITS DURING THE FIVE YEAR PLAN EXCEPT PURSUANT TO THIS SECTION.

9. NO ADDITIONAL BORROWING TO FINANCE STATE OPERATING DEFICITS SHALL BE INCURRED AFTER THE FIRST THREE YEARS OF THE FIVE YEAR FISCAL PLAN PURSUANT TO PARAGRAPH A OF SUBDIVISION ONE OF SECTION TWENTY-TWO OF THIS CHAPTER.

S 7. The state finance law is amended by adding a new section 92-h to read as follows:

S 92-H. FINANCIAL RECOVERY ACT BOND PROCEEDS FUND. 1. THERE IS HEREBY ESTABLISHED IN THE SOLE CUSTODY OF THE STATE COMPTROLLER A FUND TO BE KNOWN AS THE FINANCIAL RECOVERY ACT BOND PROCEEDS FUND.

2. SUCH FUND SHALL CONSIST OF THE NET PROCEEDS, AS SUCH TERM IS DEFINED IN SECTION SIXTY-EIGHT-D OF THIS CHAPTER FOR THE FINANCIAL RECOVERY ACT, OF THE SALE OF BONDS, NOTES, CERTIFICATES OF PARTICIPATION OR OTHER EVIDENCE OF INDEBTEDNESS ISSUED BY AUTHORIZED ISSUERS PURSUANT TO SUBDIVISION ONE OF SECTION SIXTY-EIGHT-A OF THIS CHAPTER, ALL INTEREST EARNED BY SUCH NET PROCEEDS AND ALL OTHER MONEYS CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND PURSUANT TO LAW.

3. NO MONEYS IN SUCH FUND SHALL BE EXPENDED FROM SUCH FUND UNTIL THE STATE COMPTROLLER DETERMINES THAT LEGISLATIVE PASSAGE OF THE BUDGET HAS OCCURRED FOR THE CURRENT STATE FISCAL YEAR IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF SECTION FIVE OF THE LEGISLATIVE LAW.

4. ALL MONIES SHALL REMAIN IN SUCH FUND UNLESS OTHERWISE DIRECTED BY STATUTE.

S 8. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 9. This act shall take effect immediately.