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

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2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. CLARK, JOHN, V. LOPEZ -- Multi-Sponsored by -- M. of A. ABBATE, ALFANO, BARRA, BRENNAN, GALEF, GREENE, HOOPER, JACOBS, TOWNS, WEINSTEIN -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to the construction and financing of facilities by the dormitory authority for day care providers

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

Section 1. Paragraph (b) of subdivision 2 of section 1676 of the public authorities law is amended by adding a new undesignated paragraph to read as follows:

DAY CARE PROVIDERS.

S 2. Subdivision 1 of section 1680 of the public authorities law is amended by adding a new undesignated paragraph to read as follows:

DAY CARE PROVIDERS.

S 3. Section 1676 of the public authorities law is amended by adding a new subdivision 46 to read as follows:

46. (A) THE TERM "DAY CARE PROVIDER" OR "PROVIDER" SHALL MEAN A CORPORATION LICENSED TO OPERATE A CHILD CARE CENTER AS DEFINED IN SECTION THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW PROVIDING CARE AND MAINTENANCE PURSUANT TO ARTICLE SIX OF THE SOCIAL SERVICES LAW.

(B) THE TERM "FACILITY" SHALL MEAN A CHILD CARE CENTER AS DEFINED IN SECTION THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW.

S 4. Section 1680 of the public authorities law is amended by adding a new subdivision 41 to read as follows:

41. A. THE DORMITORY AUTHORITY MAY ENTER INTO LEASES, SUBLEASES, OR OTHER AGREEMENTS WITH DAY CARE PROVIDERS FOR THE FINANCING OF AND THE DESIGN, CONSTRUCTION, RECONSTRUCTION, REHABILITATION, IMPROVEMENT, RENOVATION, ACQUISITION OR OTHERWISE PROVIDING FOR, FURNISHING OR EQUIPPING OF FACILITIES WHERE THE TOTAL ESTIMATED COST OF SUCH FACILITIES EXCEEDS

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

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TEN THOUSAND DOLLARS. THE PLANS AND SPECIFICATIONS OF SUCH FACILITIES, AND THE TOTAL PROJECT COST THEREOF, SHALL BE SUBJECT TO THE APPROVAL OF THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES. SUCH FACILITIES MAY BE CONSTRUCTED ONLY ON PROPERTY OWNED BY SUCH DAY CARE PROVIDER OR, IF THE PROPERTY IS LEASED, WHERE THE LEASE IS FOR A PERIOD AT LEAST EQUAL TO THE APPROPRIATE PERIOD OF PROBABLE USEFULNESS FOR SUCH FACILITIES AS LISTED IN SECTION 11.00 OF THE LOCAL FINANCE LAW, OR TWO TIMES THE LENGTH OF THE LEASE, SUBLEASE OR OTHER AGREEMENT WITH THE DORMITORY AUTHORITY, WHICHEVER IS LONGER.

B. EACH SUCH PROVIDER SHALL, NOTWITHSTANDING ANY OTHER PROVISION OF LAW, HAVE THE POWER TO CONVEY, LEASE, SUBLEASE OR OTHERWISE MAKE AVAILABLE TO THE DORMITORY AUTHORITY WITHOUT CONSIDERATION, TITLE OR ANY OTHER RIGHTS IN REAL PROPERTY SATISFACTORY TO THE DORMITORY AUTHORITY.

C. IN ADDITION TO PROVIDING FOR ALL OTHER MATTERS DEEMED NECESSARY AND PROPER, SUCH LEASES, SUBLEASES AND OTHER AGREEMENTS SHALL (1) REQUIRE SUCH PROVIDER TO PAY TO THE DORMITORY AUTHORITY ANNUAL RENTALS WHICH SHALL INCLUDE THE AMOUNT REQUIRED TO PAY THE PRINCIPAL OF AND INTEREST ON OBLIGATIONS OF THE DORMITORY AUTHORITY ISSUED IN RELATION TO PROVIDING SUCH FACILITIES AND ALL INCIDENTAL EXPENSES OF THE DORMITORY AUTHORITY INCURRED IN RELATION THERETO, (2) REQUIRE THE PROVIDER TO INCLUDE AN AMOUNT SUFFICIENT TO MEET ITS OBLIGATIONS UNDER THE LEASE, SUBLEASE OR OTHER AGREEMENT IN EACH PROPOSED BUDGET SUBMITTED DURING THE TERM OF THE LEASE, SUBLEASE OR OTHER AGREEMENT, AND (3) NOT BE EXECUTED UNTIL SUCH FACILITIES ARE APPROVED BY THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES.

D. TITLE OR OTHER REAL PROPERTY RIGHTS TO THE FACILITIES FINANCED PURSUANT TO THIS SUBDIVISION SHALL REMAIN WITH THE DORMITORY AUTHORITY UNTIL THE DORMITORY AUTHORITY CERTIFIES TO THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE COMPTROLLER THE RECEIPT BY IT OF THE AMOUNT NECESSARY TO PAY THE TOTAL AGGREGATE AMOUNT OF ANNUAL RENTALS TO THE DORMITORY AUTHORITY. AT SUCH TIME, TITLE OR OTHER REAL PROPERTY RIGHTS THERETO SHALL BE TRANSFERRED BY THE DORMITORY AUTHORITY TO SUCH PROVIDER. IN ORDER TO AVAIL ITSELF OF THE PROVISIONS OF THIS SUBDIVISION, EACH SUCH PROVIDER MUST ALSO AGREE TO CONTINUE TO OPERATE A FACILITY AND SHALL BE REQUIRED TO ALLOCATE TWENTY-FIVE PERCENT OR MORE OF ITS CAPACITY PURSUANT TO CONTRACTS WITH SOCIAL SERVICES DISTRICTS. SUCH LEASE, SUBLEASE OR OTHER AGREEMENT WITH THE DORMITORY AUTHORITY SHALL PROVIDE THAT, IF THE PROVIDER SHALL CEASE TO OPERATE SUCH A PROGRAM AT ANY TIME DURING THE TERM OF THE AGREEMENT: (I) THE STATE WILL HAVE THE OPTION TO TAKE SUCH TITLE OR OTHER REAL PROPERTY RIGHTS OF THE DORMITORY AUTHORITY IN LAND, BUILDINGS, EQUIPMENT AND OTHER PROPERTIES WHICH THE PROVIDER USES FOR ITS PROGRAM UPON, SUBJECT TO APPROPRIATIONS, PAYMENT BY THE STATE TO THE DORMITORY AUTHORITY OF THE AMOUNT REQUIRED TO PAY THE TOTAL AGGREGATE AMOUNT OF ANNUAL RENTALS TO THE DORMITORY AUTHORITY; OR (II) THE PROVIDER SHALL PAY TO THE DORMITORY AUTHORITY ONE HUNDRED PERCENT OF THE OUTSTANDING PRINCIPAL AND INTEREST AND IN ADDITION TO SUCH BALANCE SHALL ALSO PAY THE AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE INTEREST DUE AND THE INTEREST THAT WOULD HAVE BEEN DUE HAD THE RATE OF INTEREST CHARGED BEEN AT THE COMMERCIAL LENDING RATE OVER THE SAME PERIOD.

E. METHOD OF PAYMENT; RESERVE FUND. (1) ANY DAY CARE PROVIDER WHICH ELECTS TO AVAIL ITSELF OF THE PROVISIONS OF THIS SUBDIVISION SHALL ESTABLISH WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES A DAY CARE CENTER FACILITIES DEBT SERVICE RESERVE FUND WHICH SHALL BE USED TO PAY TO THE DORMITORY AUTHORITY THE ANNUAL RENTALS PAYABLE TO THE DORMITORY AUTHORITY BY SUCH PROVIDER WHICH HAVE ENTERED INTO A LEASE, SUBLEASE OR

OTHER AGREEMENT WITH THE DORMITORY AUTHORITY TO PROVIDE RESIDENTIAL FACILITIES PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION. THE DORMITORY AUTHORITY SHALL IDENTIFY TO THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES WITH RESPECT TO FACILITIES, THE PROVIDERS WITH WHICH IT HAS LEASES, SUBLEASES OR OTHER AGREEMENTS PURSUANT TO THIS SUBDIVISION AND SHALL ANNUALLY CERTIFY THE AMOUNT OF ANNUAL RENTALS REQUIRED TO BE PAID PURSUANT TO SUCH LEASES, SUBLEASES OR OTHER AGREEMENTS.

(2) (I) DAY CARE CENTER FACILITIES RESERVE ACCOUNT. THERE SHALL BE CREATED AN ACCOUNT IN THE CUSTODY OF THE COMPTROLLER TO BE KNOWN AS THE DAY CARE CENTER FACILITIES RESERVE ACCOUNT INTO WHICH SHALL BE DEPOSITED ANY MONEYS HELD IN RESERVE BY THE OFFICE OF CHILDREN AND FAMILY SERVICES ON BEHALF OF PARTICIPATING PROVIDERS WHICH SHALL BE USED IN PAYMENT OF OBLIGATIONS PURSUANT TO AGREEMENTS MADE WITH THE DORMITORY AUTHORITY PURSUANT TO THIS SUBDIVISION. UPON CERTIFICATION FROM THE DORMITORY AUTHORITY THAT IT REQUIRES A PAYMENT OR PAYMENTS TO COMPLY WITH ANY LEASE, SUBLEASE OR OTHER AGREEMENT PURSUANT TO THIS SUBDIVISION, THE COMPTROLLER SHALL PAY FROM SUCH ACCOUNT ON OR BEFORE THE SPECIFIED DATE TO THE DORMITORY AUTHORITY OR TO THE PAYING AGENT DESIGNATED BY THE DORMITORY AUTHORITY THE AMOUNT OR AMOUNTS SO CERTIFIED. ANY PAYMENTS OF MONEY FROM SUCH ACCOUNT SHALL BE MADE ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER.

(II) DAY CARE CENTER FACILITIES DEBT SERVICE RESERVE FUNDS. THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL CREATE AND ESTABLISH ONE OR MORE SPECIAL FUNDS TO BE KNOWN AS DAY CARE CENTER FACILITIES DEBT SERVICE RESERVE FUNDS, AND PURSUANT TO AGREEMENTS BETWEEN THE PROVIDER AND THE DORMITORY AUTHORITY, SHALL PAY INTO SUCH RESERVE FUNDS:

(A) ANY MONEYS APPROPRIATED AND MADE AVAILABLE BY THE STATE TO DAY CARE PROVIDERS AND PLEDGED PURSUANT TO AGREEMENTS BETWEEN SUCH PROVIDERS AND THE DORMITORY AUTHORITY; AND

(B) ANY OTHER MONEYS WHICH MAY BE MADE AVAILABLE TO THE AGENCY FOR THE PURPOSE OF PAYMENT OF OBLIGATIONS MADE PURSUANT TO AGREEMENTS BETWEEN SUCH PROVIDERS AND THE DORMITORY AUTHORITY, INCLUDING PAYMENTS FROM SOCIAL SERVICES DISTRICTS PURSUANT TO AGREEMENTS AND CONTRACTS BETWEEN SUCH DISTRICTS AND PARTICIPATING PROVIDERS. THE DEPARTMENT OF FAMILY ASSISTANCE SHALL TRANSFER MONEYS HELD IN THE FUND ON BEHALF OF PARTICIPATING PROVIDERS TO THE COMPTROLLER.

(III) REVENUES IN ANY SPECIAL ACCOUNT IN THE DAY CARE CENTER FACILITIES RESERVE ACCOUNT MAY BE COMMINGLED WITH ANY OTHER MONEYS IN SUCH ACCOUNT. ALL DEPOSITS OF SUCH REVENUES WITH BANKS AND TRUST COMPANIES SHALL BE SECURED BY OBLIGATIONS OF THE UNITED STATES OR OF THE STATE OF NEW YORK OR ITS POLITICAL SUBDIVISIONS. SUCH OBLIGATIONS SHALL HAVE A MARKET VALUE AT LEAST EQUAL AT ALL TIMES TO, BUT NOT LESS THAN, ONE HUNDRED FIVE PERCENT OF THE AMOUNT OF SUCH DEPOSITS. ALL BANKS AND TRUST COMPANIES ARE AUTHORIZED TO GIVE SECURITY FOR SUCH DEPOSITS. ANY SUCH REVENUES IN SUCH ACCOUNT MAY, IN THE DISCRETION OF THE COMPTROLLER, BE INVESTED IN OBLIGATIONS OF THE UNITED STATES OR THE STATE OR OBLIGATIONS THE PRINCIPAL OF AND INTEREST ON WHICH ARE GUARANTEED BY THE UNITED STATES OR BY THE STATE. ANY INTEREST EARNED SHALL BE CREDITED TO SUCH ACCOUNT.

(3) MEMORANDUM OF UNDERSTANDING. THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE COMPTROLLER AND THE DORMITORY AUTHORITY FOR IMPLEMENTATION OF THIS SUBDIVISION. THE FORM AND CONTENT OF SUCH MEMORANDUM SHALL BE APPROVED BY THE DIVISION OF BUDGET.

F. ALL STATE AND LOCAL OFFICIALS ARE AUTHORIZED AND REQUIRED TO TAKE WHATEVER ACTIONS ARE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SUBDIVISION AND THE PROVISIONS OF ANY LEASES, SUBLEASES OR OTHER AGREEMENTS ENTERED INTO PURSUANT TO THIS SUBDIVISION, INCLUDING MAKING THE REQUIRED PAYMENTS TO THE DORMITORY AUTHORITY.

S 5. This act shall take effect immediately.