

2012

2009-2010 Regular Sessions

I N S E N A T E

February 10, 2009

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the social services law and the public authorities law, in relation to directing the out-of-state placement committee to develop a residential bed plan and in relation to authorizing the dormitory authority to finance new facilities

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

1 Section 1. Section 483-d of the social services law is amended by
2 adding a new subdivision 7-a to read as follows:
3 7-A. RESIDENTIAL BED PLAN. (A) THE OUT-OF-STATE PLACEMENT COMMITTEE
4 MEMBERS SHALL DEVELOP A RESIDENTIAL BED PLAN THAT INCLUDES RECOMMENDA-
5 TIONS TO ADDRESS CURRENT AND FUTURE PROGRAMMATIC AND PHYSICAL PLANT
6 NEEDS FOR RENOVATED AND NEW IN-STATE CAPACITY AT RESIDENTIAL SCHOOLS AND
7 RESIDENTIAL FACILITIES, INCLUDING BUT NOT LIMITED TO: RESIDENTIAL INSTI-
8 TUTIONS FOR CHILDREN, AS DEFINED IN SUBDIVISION FORTY-FOUR OF SECTION
9 SIXTEEN HUNDRED SEVENTY-SIX OF THE PUBLIC AUTHORITIES LAW AND ANY OTHER
10 OFFICE OF CHILDREN AND FAMILY SERVICES LICENSED FACILITY; AND COMMUNITY
11 RESIDENCES, AS DEFINED IN SUBDIVISION TWENTY-EIGHT OF SECTION 1.03 OF
12 THE MENTAL HYGIENE LAW.
13 (I) THE COMMITTEE, IN CONSULTATION WITH THE DIVISION OF THE BUDGET,
14 SHALL DEVELOP A RESIDENTIAL BED PLAN THAT WILL BE BASED ON AGENCY DATA
15 REGARDING CHILDREN CURRENTLY IN NEED OF RESIDENTIAL SERVICES AND THE
16 PROJECTED FUTURE NEED FOR SUCH SERVICES, AND CURRENT PHYSICAL STATE AND
17 CAPACITY OF RESIDENTIAL SCHOOLS AND RESIDENTIAL FACILITIES. EACH MEMBER
18 AGENCY THAT PLACES CHILDREN OR HAS OVERSIGHT RESPONSIBILITY FOR THE
19 PLACEMENT OF CHILDREN IN RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES
20 WILL PROVIDE THIS DATA TO THE COMMITTEE.
21 (II) THE COMMITTEE SHALL FORWARD THE PLAN TO THE GOVERNOR, THE MAJORI-
22 TY LEADER OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEAD-
23 ER OF THE SENATE, AND THE MINORITY LEADER OF THE ASSEMBLY, AS SOON AS

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

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PRACTICABLE, BUT IN NO EVENT LATER THAN THE TWO THOUSAND ELEVEN ANNUAL PROGRESS REPORT REQUIRED PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION, WITH ANNUAL UPDATES ON ITS PROGRESS IN MEETING THE PLAN'S GOALS TO BE INCLUDED THEREAFTER IN SUCH REPORT.

(B) IN ACCORDANCE WITH THE RESIDENTIAL BED PLAN DEVELOPED BY THE COMMITTEE AND IN CONSULTATION WITH THE DIVISION OF THE BUDGET, INDIVIDUAL COMMITTEE MEMBER AGENCIES SHALL ISSUE A REQUEST FOR PROPOSALS TO PROVIDERS OF NOT-FOR-PROFIT RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES WITHIN THE STATE FOR THE CONSTRUCTION OF NEW RESIDENTIAL SCHOOLS AND RESIDENTIAL FACILITIES AND THE RENOVATION OR REHABILITATION OF EXISTING RESIDENTIAL SCHOOLS AND RESIDENTIAL FACILITIES.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, MEMBERS OF THE COMMITTEE SHALL AUTHORIZE OR SEEK AUTHORIZATION FOR CREATION OF A REIMBURSEMENT FACTOR FOR APPROVED CAPITAL COSTS FOR NEW FACILITIES AND RENOVATION OR REHABILITATION OF EXISTING FACILITIES WITHIN THE EXISTING RATE METHODOLOGIES OF SUCH MEMBER AGENCY, INCLUDING ANY SPECIAL RATE METHODOLOGIES ESTABLISHED FOR THE DORMITORY AUTHORITY FINANCED PROGRAMS, UPON ITS DETERMINATION AND WITH THE CONCURRENCE OF THE MEMBERS OF THE COMMITTEE, THAT THE CONSTRUCTION OR REHABILITATION OF SUCH RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY IS DESIRABLE AND IN KEEPING WITH THE RESIDENTIAL BED PLAN.

(D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE DORMITORY AUTHORITY IS HEREBY AUTHORIZED TO PROVIDE FINANCING OF THE COSTS RELATED TO THE CONSTRUCTION OF NEW FACILITIES AND THE RENOVATION OR REHABILITATION OF EXISTING RESIDENTIAL SCHOOLS AND RESIDENTIAL FACILITIES, PURSUANT TO THE PLAN DEVELOPED IN ACCORDANCE WITH PARAGRAPH (A) OF THIS SUBDIVISION.

(E) NOTHING CONTAINED IN THIS SUBDIVISION SHALL REQUIRE THAT THE DORMITORY AUTHORITY BE THE SOLE OR ONLY FINANCIER OF SUCH NEW FACILITIES OR RENOVATION OR REHABILITATION OF EXISTING FACILITIES.

S 2. 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:

ANY RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY AS DEFINED IN SUBDIVISION FORTY-SIX OF THIS SECTION FOR THE FINANCING, REFINANCING, DESIGN, REPLACEMENT (INCLUDING ACQUISITION AND CONSTRUCTION), RECONSTRUCTION, REHABILITATION, IMPROVEMENT, RENOVATION, AND EQUIPPING OF RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES.

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

46. THE TERM "RESIDENTIAL FACILITY" OR "RESIDENTIAL SCHOOL" SHALL MEAN A NOT-FOR-PROFIT CORPORATION THAT IS LICENSED OR CERTIFIED BY A STATE AGENCY OR DEPARTMENT TO OPERATE A RESIDENTIAL SCHOOL OR A RESIDENTIAL FACILITY FOR CHILDREN PLACED BY STATE AND LOCAL AGENCIES OR DEPARTMENTS, INCLUDING BUT NOT LIMITED TO, THE COMMITTEE ON SPECIAL EDUCATION OF A SCHOOL DISTRICT OR LOCAL SOCIAL SERVICES DISTRICT.

S 4. Subdivision 1 of section 1680 of the public authorities law is amended by adding a new undesignated paragraph to read as follows:

ANY RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY AS DEFINED IN SUBDIVISION FORTY-SIX OF SECTION SIXTEEN HUNDRED SEVENTY-SIX OF THIS TITLE FOR THE FINANCING, REFINANCING, DESIGN, REPLACEMENT (INCLUDING ACQUISITION AND CONSTRUCTION), RECONSTRUCTION, REHABILITATION, IMPROVEMENT, RENOVATION AND EQUIPPING OF SUCH RESIDENTIAL SCHOOLS AND RESIDENTIAL FACILITIES THAT HAVE BEEN APPROVED IN ACCORDANCE WITH SUBDIVISION SEVEN-A OF SECTION FOUR HUNDRED EIGHTY-THREE-D OF THE SOCIAL SERVICES LAW AND THAT

1 ARE CONSISTENT WITH THE RESIDENTIAL BED PLAN ADVANCED IN ACCORDANCE WITH
2 SUCH SUBDIVISION.

3 S 5. Section 1680 of the public authorities law is amended by adding a
4 new subdivision 41 to read as follows:

5 41. A. ANY LEASE, SUBLEASE OR OTHER AGREEMENT BY AND BETWEEN THE
6 AUTHORITY AND A NOT-FOR-PROFIT CORPORATION OPERATING A RESIDENTIAL
7 SCHOOL OR RESIDENTIAL FACILITY SHALL, IN ADDITION TO ANY OTHER
8 PROVISIONS DEEMED NECESSARY BY THE AUTHORITY, CONTAIN THE FOLLOWING:

9 (1) A REQUIREMENT THAT SUCH NOT-FOR-PROFIT CORPORATION ESTABLISH AN
10 ACCOUNT WITH A BANK OR TRUST COMPANY ACCEPTABLE TO THE AUTHORITY INTO
11 WHICH THE NOT-FOR-PROFIT CORPORATION SHALL DEPOSIT, OR CAUSE TO BE
12 DEPOSITED, ALL AMOUNTS RECEIVED BY SUCH NOT-FOR-PROFIT CORPORATION FROM
13 ANY SCHOOL DISTRICT, SOCIAL SERVICES DISTRICT, OR ANY OTHER PAYOR ON
14 ACCOUNT OF THE RESIDENTIAL AND EDUCATIONAL SERVICES PROVIDED BY SUCH
15 NOT-FOR-PROFIT CORPORATION. THE NOT-FOR-PROFIT CORPORATION SHALL GRANT
16 TO THE AUTHORITY A SECURITY INTEREST IN SUCH ACCOUNT AND THE MONEYS ON
17 DEPOSIT THEREIN SHALL BE SUBJECT TO WITHDRAWAL BY THE NOT-FOR-PROFIT
18 CORPORATION ONLY AFTER PAYMENT OF AMOUNTS THEN DUE TO THE AUTHORITY AS
19 PROVIDED IN SUCH LEASE, SUBLEASE OR OTHER AGREEMENT;

20 (2) A REQUIREMENT THAT THE NOT-FOR-PROFIT CORPORATION GRANT TO THE
21 AUTHORITY EITHER A MORTGAGE ON THE REAL PROPERTY USED BY SUCH
22 NOT-FOR-PROFIT CORPORATION TO PROVIDE RESIDENTIAL AND EDUCATIONAL
23 SERVICES OR SUCH OTHER INTEREST IN REAL PROPERTY AS IS ACCEPTABLE TO THE
24 AUTHORITY;

25 (3) A REQUIREMENT THAT THE NOT-FOR-PROFIT CORPORATION CONTINUE TO
26 OPERATE A RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY FOR CHILDREN PLACED
27 BY STATE AND LOCAL AGENCIES AND DEPARTMENTS (INCLUDING BUT NOT LIMITED
28 TO THE COMMITTEE ON SPECIAL EDUCATION OF A SCHOOL DISTRICT OR A LOCAL
29 SOCIAL SERVICES DISTRICT) FOR THE TERM OF THE LEASE, SUBLEASE OR OTHER
30 AGREEMENT AND IN THE EVENT SUCH NOT-FOR-PROFIT CORPORATION FAILS TO DO
31 SO, PROVIDE FOR THE TRANSFER AND OPERATION OF THE RESIDENTIAL PROGRAMS
32 OR EDUCATIONAL PROGRAMS TO A REPLACEMENT NOT-FOR-PROFIT OPERATOR THAT IS
33 QUALIFIED TO PROVIDE SUCH SERVICES AND THAT HAS ASSUMED THE OBLIGATIONS
34 OF SUCH NOT-FOR-PROFIT CORPORATION PURSUANT TO SUCH AGREEMENT;

35 (4) ALL STATE AND LOCAL OFFICERS ARE HEREBY AUTHORIZED AND REQUIRED TO
36 PAY ALL FUNDS PAYABLE TO A RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY ON
37 ACCOUNT OF THE RESIDENTIAL AND EDUCATIONAL SERVICES PROVIDED BY SUCH
38 NOT-FOR-PROFIT CORPORATION INTO THE ACCOUNT ESTABLISHED PURSUANT TO
39 SUBPARAGRAPH ONE OF THIS PARAGRAPH. IN THE EVENT OF THE FAILURE OF THE
40 APPLICABLE PAYOR TO MAKE A MAINTENANCE RATE PAYMENT (OR OTHER SIMILAR
41 RATE COMPONENT ESTABLISHED BY THE STATE AGENCY OR DEPARTMENT WHICH
42 LICENSED OR CERTIFIED THE RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY) TO
43 THE NOT-FOR-PROFIT CORPORATION FOR RESIDENTIAL CARE AND EDUCATIONAL
44 SERVICES PROVIDED TO A CHILD IN THE RESIDENTIAL SCHOOL OR RESIDENTIAL
45 FACILITY, THE STATE COMPTROLLER SHALL WITHHOLD STATE REIMBURSEMENT TO
46 THE APPLICABLE PAYOR IN AN AMOUNT EQUAL TO THE UNPAID OBLIGATION FOR THE
47 CAPITAL FINANCING ADD-ON RATE (OR OTHER SIMILAR RATE COMPONENT ESTAB-
48 LISHED BY THE STATE AGENCY OR DEPARTMENT WHICH LICENSED OR CERTIFIED THE
49 RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY) AND PAY OVER SUCH SUM TO THE
50 AUTHORITY OR ITS TRUSTEE UPON CERTIFICATION OF THE COMMISSIONER OF THE
51 OFFICE OF CHILDREN AND FAMILY SERVICES, THE STATE EDUCATION DEPARTMENT
52 OR ANY OTHER STATE GOVERNMENTAL PAYOR, AS APPLICABLE; AND

53 (5) A REQUIREMENT THAT THE NOT-FOR-PROFIT CORPORATION PAY TO THE
54 AUTHORITY THE AMOUNT REQUIRED TO PAY THE PRINCIPAL OF AND INTEREST ON
55 OBLIGATIONS OF THE AUTHORITY ISSUED IN RELATION TO PROVIDING SUCH RESI-

1 DENTIAL SCHOOLS AND RESIDENTIAL FACILITIES AND ALL INCIDENTAL EXPENSES
2 OF THE AUTHORITY INCURRED IN RELATION THERETO.

3 B. THE AUTHORITY SHALL NOT ENTER INTO ANY AGREEMENT AUTHORIZED BY
4 PARAGRAPH A OF THIS SUBDIVISION UNLESS AND UNTIL THE STATE AGENCY OR
5 DEPARTMENT WHICH CERTIFIED THE RESIDENTIAL SCHOOL OR RESIDENTIAL FACILI-
6 TY, TOGETHER WITH THE DIRECTOR OF THE DIVISION OF THE BUDGET, HAVE
7 APPROVED IN WRITING THE PROJECT TO BE FINANCED WITH THE PROCEEDS OF
8 BONDS ISSUED BY THE AUTHORITY.

9 C. THE AUTHORITY SHALL NOT ISSUE ANY BONDS OR NOTES IN EXCESS OF THIR-
10 TY MILLION DOLLARS FOR THE PURPOSE OF FINANCING THE COSTS RELATED TO
11 RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES AS DEFINED IN SUBDIVISION
12 FORTY-SIX OF SECTION SIXTEEN HUNDRED SEVENTY-SIX OF THIS TITLE, WHICH
13 BONDS AND NOTES SHALL BE IN ADDITION TO ANY BONDS OR NOTES WHICH THE
14 AUTHORITY MAY ISSUE PURSUANT TO SUBDIVISION FORTY OF THIS SECTION. IN
15 CALCULATING THE AMOUNT OF BONDS OR NOTES ISSUED OR OUTSTANDING PURSUANT
16 TO THIS SUBDIVISION, THE FOLLOWING SHALL BE EXCLUDED THEREFROM: (1) THE
17 PRINCIPAL AMOUNT OF BONDS OR NOTES ISSUED TO FUND ONE OR MORE DEBT
18 SERVICE RESERVE FUNDS; (2) THE PRINCIPAL AMOUNT OF BONDS OR NOTES ISSUED
19 TO PAY THE COSTS OF ISSUANCE OF SUCH BONDS OR TO PROVIDE FOR THE PAYMENT
20 OF INTEREST ON THE BONDS DURING CONSTRUCTION; AND (3) THE PRINCIPAL
21 AMOUNT OF BONDS OR NOTES ISSUED TO REFUND OR OTHERWISE REPAY SUCH BONDS
22 AND BONDS OR NOTES PREVIOUSLY ISSUED. EXCEPT FOR PURPOSES OF COMPLYING
23 WITH THE INTERNAL REVENUE CODE, ANY INTEREST INCOME EARNED ON BOND
24 PROCEEDS SHALL ONLY BE USED TO PAY DEBT SERVICE ON SUCH BONDS OR NOTES.

25 S 6. The social services law is amended by adding a new section 462-c
26 to read as follows:

27 S 462-C. STANDARDS OF PAYMENT. 1. (A) THE OFFICE OF CHILDREN AND FAMI-
28 LY SERVICES SHALL ESTABLISH, SUBJECT TO CONSULTATION WITH THE APPROPRI-
29 ATE STATE AGENCIES, THE APPROVAL OF THE DIRECTOR OF THE BUDGET AND
30 FEDERAL APPROVAL, STANDARDS OF PAYMENT FOR THE CAPITAL COSTS OF APPROVED
31 PROJECTS FOR RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES WHICH ENTER
32 INTO A LEASE, SUBLEASE OR OTHER AGREEMENT WITH THE DORMITORY AUTHORITY
33 PURSUANT TO SUBDIVISION FORTY-ONE OF SECTION SIXTEEN HUNDRED EIGHTY OF
34 THE PUBLIC AUTHORITIES LAW. THE MAINTENANCE RATE ESTABLISHED BY THE
35 COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES FOR SUCH
36 RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES SHALL BE ESTABLISHED IN
37 TWO PARTS, ONE PART OF WHICH WILL BE THE CAPITAL FINANCING ADD-ON RATE,
38 WHICH SHALL BE THE COST PER CHILD OF THE ANNUAL PAYMENT PURSUANT TO SUCH
39 LEASE, SUBLEASE OR OTHER AGREEMENT. THE APPLICABLE SOCIAL SERVICES
40 DISTRICT, SCHOOL DISTRICT OR OTHER PAYOR RESPONSIBLE FOR THE MAINTENANCE
41 COST OF A CHILD PLACED IN SUCH RESIDENTIAL SCHOOL OR RESIDENTIAL FACILI-
42 TY, SHALL AGREE TO PAY AND IS RESPONSIBLE FOR PAYING THE NOT-FOR-PROFIT
43 CORPORATION OPERATING THE RESIDENTIAL SCHOOL OR THE RESIDENTIAL FACILITY
44 ONE HUNDRED PERCENT OF THE CAPITAL FINANCING ADD-ON RATE FOR EACH SUCH
45 CHILD PLACED IN SUCH INSTITUTION. TO THE EXTENT PERMISSIBLE UNDER FEDER-
46 AL LAW AND REGULATION, THE CAPITAL FINANCING ADD-ON RATE SHALL NOT BE
47 SUBJECT TO ANY COST SCREENS, CAPS OR PARAMETERS LIMITING OR REDUCING THE
48 AMOUNT OF SUCH COST REQUIRED BY THIS SECTION.

49 (B) THE EXPENDITURES MADE BY THE APPLICABLE PAYOR FOR THE CAPITAL
50 FINANCING ADD-ON RATE FOR CHILDREN PLACED IN A RESIDENTIAL SCHOOL OR
51 RESIDENTIAL FACILITY WHICH HAS A LEASE, SUBLEASE OR OTHER AGREEMENT WITH
52 THE AUTHORITY PURSUANT TO SUBDIVISION FORTY-ONE OF SECTION SIXTEEN
53 HUNDRED EIGHTY OF THE PUBLIC AUTHORITIES LAW, SHALL BE SUBJECT TO STATE
54 REIMBURSEMENT IN ACCORDANCE WITH SUBDIVISION FIVE OF SECTION THREE
55 HUNDRED NINETY-EIGHT-A OF THIS CHAPTER AND ARTICLE EIGHTY-NINE OF THE
56 EDUCATION LAW, AS APPLICABLE.

1 S 7. Subdivision 1 of section 462 of the social services law is
2 amended by adding a new paragraph (g) to read as follows:

3 (G) NO RESIDENTIAL SCHOOL OR RESIDENTIAL FACILITY AS DEFINED IN SUBDI-
4 VISION FORTY-SIX OF SECTION SIXTEEN HUNDRED SEVENTY-SIX OF THE PUBLIC
5 AUTHORITIES LAW SHALL ENTER INTO A LEASE, SUB-LEASE OR OTHER AGREEMENT
6 WITH THE AUTHORITY PURSUANT TO SUBDIVISION FORTY-ONE OF SECTION SIXTEEN
7 HUNDRED EIGHTY OF THE PUBLIC AUTHORITIES LAW UNLESS AND UNTIL:

8 (I) THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE DIRECTOR OF THE
9 DIVISION OF THE BUDGET AND ANY OTHER STATE AGENCY WHICH LICENSES, CERTI-
10 FIES OR ISSUES OPERATING CERTIFICATES TO SUCH RESIDENTIAL SCHOOL OR
11 RESIDENTIAL FACILITY FIRST DETERMINES THAT THE PROJECT IS CONSISTENT
12 WITH THE RESIDENTIAL BED PLAN DEVELOPED PURSUANT TO SUBDIVISION SEVEN-A
13 OF SECTION FOUR HUNDRED EIGHTY-THREE-D OF THIS CHAPTER AND APPROVES THE
14 PROJECT COST ON THE BASIS THAT SUCH COSTS ARE REASONABLE, NECESSARY AND
15 COST EFFECTIVE BASED UPON THE APPLICATION OF COST PER SQUARE FOOT GUIDE-
16 LINES AND ANY OTHER STANDARDS APPLICABLE TO THE TYPE OF PROGRAM OR TO
17 THE CLINICALLY-REQUIRED NEEDS OF A SPECIALIZED GROUP OF CHILDREN TO BE
18 SERVED BY THE PROJECT; AND

19 (II) THE OFFICE OF CHILDREN AND FAMILY SERVICES OR SUCH OTHER STATE
20 AGENCY WHICH LICENSES, CERTIFIES OR ISSUES OPERATING CERTIFICATES TO
21 SUCH RESIDENTIAL SCHOOLS OR RESIDENTIAL FACILITIES APPROVES THE PLANS
22 AND SPECIFICATIONS OF THE FACILITIES TO BE REPLACED, RECONSTRUCTED,
23 REHABILITATED, IMPROVED, RENOVATED, OR OTHERWISE PROVIDED FOR, FURNISHED
24 OR EQUIPPED.

25 S 8. This act shall take effect immediately.