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

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2009-2010 Regular Sessions

I N S E N A T E

February 11, 2009

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law and the state finance law, in relation to establishing a loan guarantee program for schools authorized under article 56 of the education law

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

Section 1. The public authorities law is amended by adding a new section 1689-j to read as follows:

S 1689-J. CHARTER SCHOOL LOAN GUARANTEE PROGRAM. 1. DEFINITIONS. AS USED IN THIS SECTION:

(A) "AUTHORITY" SHALL MEAN THE DORMITORY AUTHORITY CREATED BY SECTION SIXTEEN HUNDRED SEVENTY-SEVEN OF THIS TITLE.

(B) "CHARTER SCHOOL" SHALL MEAN A SCHOOL AUTHORIZED BY ARTICLE FIFTY-SIX OF THE EDUCATION LAW.

(C) "CHARTER SCHOOL PROJECT" SHALL MEAN CONSTRUCTION OF ANY NEW BUILDING, PURCHASE OF AN EXISTING BUILDING, OR REFINANCING OF AN EXISTING BUILDING IN ORDER TO FACILITATE SUBSTANTIAL IMPROVEMENT THERETO, THE FINANCING OF REAL PROPERTY DEEMED ESSENTIAL FOR THE CONDUCT OF A CHARTER SCHOOL, THE EXTENSION OR PROVISION OF UTILITIES AND ANY OTHER APPURTENANT FACILITIES TO BE USED BY ANY CHARTER SCHOOL APPROVED PURSUANT TO SECTION TWENTY-EIGHT HUNDRED FIFTY-TWO OF THE EDUCATION LAW.

(D) "LENDING INSTITUTION" SHALL MEAN THE ORIGINAL LENDER UNDER THE LOAN AGREEMENT OF PARTICIPANTS THEREIN AND ITS SUCCESSORS AND ASSIGNS, AND MAY INCLUDE BUT IS NOT LIMITED TO, AN INDIVIDUAL LENDER, CORPORATION, INSURANCE COMPANY, BANK, INVESTMENT COMPANY, EXECUTOR, TRUSTEE OR OTHER FIDUCIARY, PENSION, PROFIT SHARING, AND RETIREMENT FUND.

(E) "PAYMENTS" SHALL MEAN PERIODIC PAYMENTS CALLED FOR UNDER THE TERMS OF A LOAN, AND MAY INCLUDE, BUT IS NOT LIMITED TO, INTEREST, INSTALL-

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

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MENTS OF PRINCIPAL, TAXES AND ASSESSMENTS, LOAN INSURANCE PREMIUMS AND HAZARD INSURANCE PREMIUMS.

2. POWERS AND LIMITATIONS. THE AUTHORITY SHALL HAVE POWER TO:

(A) GUARANTEE LOAN REPAYMENTS TO A LENDING INSTITUTION THAT HAS PROVIDED THE FUNDING FOR A CHARTER SCHOOL PROJECT, AS DEFINED IN SUBDIVISION ONE OF THIS SECTION, NOT TO EXCEED EIGHTY PER CENTUM OF THE AMOUNT OF SUCH LOAN, UPON SUCH TERMS AND CONDITIONS AS THE FUND MAY PRESCRIBE, AND FOR SUCH PURPOSES, THE FUND MAY ENTER INTO SUCH AGREEMENT OR AGREEMENTS WITH LENDING INSTITUTIONS OR OTHER PERSONS AS REQUIRED.

(B) ACCEPT GIFTS, GRANTS OR LOANS FROM, AND ENTER INTO CONTRACTS OR OTHER TRANSACTIONS WITH, ANY FEDERAL OR STATE AGENCY, ANY MUNICIPALITY, ANY PRIVATE ORGANIZATION OR ANY OTHER SOURCE.

(C) ENTER INTO AGREEMENTS WITH PROSPECTIVE LENDING INSTITUTIONS AND BORROWERS FOR THE PURPOSE OF PLANNING, DESIGNING, CONSTRUCTING, ACQUIRING, ALTERING AND FINANCING PROJECTS.

(D) WHEN IT BECOMES DESIRABLE FOR THE FUND TO SAFEGUARD ITSELF FROM LOSSES, IT MAY ACQUIRE, PURCHASE, MANAGE AND OPERATE, HOLD AND DISPOSE OF REAL AND PERSONAL PROPERTY, TAKE ASSIGNMENTS OF RENTALS AND LEASES AND MAKE AND ENTER INTO ALL CONTRACTS, LEASES, AGREEMENTS AND ARRANGEMENTS NECESSARY OR INCIDENTAL TO THE PERFORMANCE OF ITS DUTIES.

(E) IN ORDER TO FURTHER THE PURPOSES OF THIS SECTION, OR TO SAFEGUARD THE LOAN GUARANTEE FUND, PURCHASE, ACQUIRE AND TAKE ASSIGNMENTS OF NOTES, MORTGAGES, AND OTHER FORMS OF SECURITY AND EVIDENCES OF INDEBTEDNESS, PURCHASE, ACQUIRE, ATTACH, SEIZE, ACCEPT OR TAKE TITLE TO ANY PROJECT BY CONVEYANCE, OR WHEN AN INSURED LOAN THEREON IS IN DEFAULT, FORECLOSE, SELL, LEASE OR RENT THE SUBJECT MATTER PROVIDED FOR BY THE LOAN.

(F) PRESCRIBE STANDARDS AND CRITERIA BY WHICH APPLICATIONS FOR LOAN GUARANTEES FOR CHARTER SCHOOLS WILL BE JUDGED, INSOFAR AS SUCH STANDARDS AND CRITERIA ARE NOT INCONSISTENT WITH THE PURPOSES OF THIS ARTICLE.

(G) GUARANTEE TO ANY BONDING AGENCY AUTHORIZED TO DO BUSINESS IN THIS STATE ANY BOND NECESSARY TO THE ACTIVITY OF THE CHARTER SCHOOL OR FOR THE UNDERTAKING OF A CHARTER SCHOOL PROJECT. SUCH GUARANTEE SHALL NOT EXCEED EIGHTY PER CENTUM OF THE FACE AMOUNT OF ANY LOSS INCURRED BY THE BONDING AGENCY.

(H) ISSUE AND SELL ITS DEBENTURES, BEARING SUCH INTEREST RATES AND HAVING SUCH MATURITIES AND OTHER TERMS AND PROVISIONS AS MAY BE DETERMINED BY THE AUTHORITY.

(I) TO DO ANY AND ALL THINGS NECESSARY OR CONVENIENT TO CARRY OUT ITS PURPOSES AND EXERCISE THE POWERS GIVEN AND GRANTED UNDER THIS SECTION, OR UNDER ANY OTHER LAW, SPECIAL, GENERAL OR LOCAL.

3. LOAN GUARANTEE FUND. THE AUTHORITY SHALL ESTABLISH A LOAN GUARANTEE FUND. THE LOAN GUARANTEE FUND SHALL BE A NON-LAPSING, REVOLVING FUND TO BE USED FOR THE PURPOSE OF CARRYING OUT THE PROVISIONS OF THIS SECTION. TO SUCH LOAN GUARANTEE FUND SHALL BE CHARGED PAYMENTS REQUIRED BY LOAN DEFAULTS. TO SUCH LOAN GUARANTEE FUND SHALL BE CREDITED ALL RECEIPTS OF THE FUND, OTHER THAN RECEIPTS ALLOCATED FOR THE PAYMENT OF CURRENT OPERATING EXPENSES, INCLUDING LOAN GUARANTEE PREMIUMS, GIFTS, GRANTS OR LOANS, PROCEEDS OF THE SALE OF DEBENTURES BY THE FUND, TRANSFERS FROM THE CHARTER SCHOOLS STIMULUS FUND CREATED BY SECTION NINETY-SEVEN-SSS OF THE STATE FINANCE LAW, AND PROCEEDS FROM THE SALE, DISPOSAL, LEASE OR RENTAL OF REAL OR PERSONAL PROPERTY WHICH THE FUND MAY RECEIVE UNDER THE PROVISIONS OF THIS SECTION. MONIES OF THE LOAN GUARANTEE FUND, NOT NEEDED TO MEET CURRENT OBLIGATIONS OF THE FUND, SHALL BE DEPOSITED TO THE CREDIT OF SUCH LOAN GUARANTEE FUND AND MAY BE INVESTED AS THE DIRECTORS OF THE FUND SHALL DETERMINE.

4. GUARANTEE OF LOANS. THE AUTHORITY IS AUTHORIZED TO GUARANTEE REPAYMENTS OF A LOAN MADE BY A LENDING INSTITUTION TO PROVIDE FUNDING FOR CHARTER SCHOOL PROJECTS AS DEFINED IN SUBDIVISION ONE OF THIS SECTION, NOT TO EXCEED EIGHTY PER CENTUM OF THE PRINCIPAL AMOUNT OF THE OBLIGATION, UPON SUCH TERMS AND CONDITIONS AS THE AUTHORITY MAY PRESCRIBE, PROVIDED THAT THE AGGREGATE AMOUNT OF THE UNPAID BALANCE OF ALL OBLIGATIONS SO GUARANTEED AND OUTSTANDING AT ANY ONE TIME SHALL NOT EXCEED TEN MILLION DOLLARS DURING THE FIRST FISCAL YEAR OF OPERATIONS OF THE FUND, AND IN ANY SUCCEEDING FISCAL YEAR, FIVE TIMES THE AVERAGE ANNUAL BALANCE IN THE LOAN GUARANTEE FUND FOR THE PRECEDING FISCAL YEAR, AND PROVIDED FURTHER, HOWEVER, THAT THE TOTAL POTENTIAL LIABILITY OF THE FUND TO A LENDING INSTITUTION ON BEHALF OF ANY ONE BORROWER SHALL NOT EXCEED FIVE MILLION DOLLARS.

5. CONDITIONS FOR GUARANTEE. IN ORDER FOR A LOAN TO BE GUARANTEED UNDER THE PROVISIONS OF THIS SECTION, THE LOAN TO BE GUARANTEED MUST BE EXECUTED BY A BORROWER TO WHOM CREDIT IS NOT REASONABLY AVAILABLE AND PROVIDE FINANCING FOR THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR REHABILITATION OF A FACILITY FOR A CHARTER SCHOOL.

6. LOAN GUARANTEE PREMIUM. THE AUTHORITY IS AUTHORIZED BUT NOT REQUIRED TO FIX PREMIUMS FOR THE GUARANTEE OF LOAN REPAYMENTS UNDER THE PROVISIONS OF THIS SECTION, SUCH PREMIUMS TO BE COMPUTED AS A PERCENTAGE, WHICH SHALL NOT EXCEED ONE PER CENTUM PER ANNUM ON THAT PORTION OF THE PRINCIPAL OBLIGATION GUARANTEED HEREUNDER AS THE FUND SHALL DETERMINE ON THE BASIS OF ALL PERTINENT AVAILABLE DATA. SUCH PREMIUMS SHALL BE PAYABLE BY THE BORROWER IN SUCH MANNER AS SHALL BE PRESCRIBED BY THE AUTHORITY. THE AMOUNT OF PREMIUM IS NOT REQUIRED TO BE UNIFORM AMONG THE VARIOUS LOANS INSURED.

7. EXPENSES. THE AUTHORITY MAY IN ITS DISCRETION EXPEND SUCH MONIES AS MAY BE NECESSARY FOR ANY OF ITS EXPENSES, INCLUDING ADMINISTRATIVE, LEGAL, ACTUARIAL AND OTHER SERVICES.

8. OBLIGATIONS ELIGIBLE FOR INVESTMENT. OBLIGATIONS GUARANTEED BY THE AUTHORITY UNDER THIS SECTION AND PARTICIPATIONS THEREIN ARE HEREBY MADE LEGAL INVESTMENTS FOR ALL INSURANCE COMPANIES, TRUST COMPANIES, BANKS, INVESTMENT COMPANIES, SAVINGS BANKS, BUILDING AND LOAN ASSOCIATIONS, CREDIT UNIONS, SAVINGS AND LOAN ASSOCIATIONS, EXECUTORS, ADMINISTRATORS, GUARDIANS, CONSERVATORS, TRUSTEES AND OTHER FIDUCIARIES, PENSION, PROFIT-SHARING AND RETIREMENT FUNDS.

9. CONTRACTS OF GUARANTEE; WAIVERS. (A) THE AUTHORITY SHALL ARRANGE BY CONTRACT WITH THE LENDING INSTITUTION OR THE BORROWER OR BOTH TO SAFEGUARD THE INTEREST OF THE FUND IN THE EVENT OF DEFAULT BY THE BORROWER, INCLUDING, AT THE DISCRETION OF THE FUND, PROVISION FOR NOTICE TO THE FUND OF DEFAULT BY THE BORROWER, FOR FORECLOSURE OR OTHER REALIZATION UPON ANY SECURITY FOR THE LOAN, FOR THE TIME AND CONDITIONS FOR PAYMENT TO THE LENDING INSTITUTION BY THE FUND OF THE AMOUNT OF ANY LOSS TO THE LENDING INSTITUTION GUARANTEED BY THE FUND, AND FOR THE DISPOSITION OF THE PROCEEDS REALIZED FROM ANY SECURITY FOR THE LOAN GUARANTEED. WHEN IT APPEARS DESIRABLE FOR A TEMPORARY PERIOD UPON DEFAULT OR THREATENED DEFAULT BY THE BORROWER, THE FUND MAY ITSELF MAKE PAYMENTS OF INSTALLMENTS OF PRINCIPAL OR INTEREST OR BOTH, TO THE LENDING INSTITUTION, AND OF TAXES AND INSURANCE, WHICH PAYMENTS SHALL BE REPAID, UNDER SUCH CONDITIONS AS THE FUND MAY PRESCRIBE, AND THE FUND MAY ALSO AGREE TO REVISED TERMS OF FINANCING WHEN SUCH APPEAR PRUDENT.

(B) UPON REQUEST OF THE LENDING INSTITUTION, THE FUND MAY AT ANY TIME, UNDER SUCH EQUITABLE TERMS AND CONDITIONS AS IT MAY PRESCRIBE, CONSENT TO THE RELEASE OF THE BORROWER FROM HIS OR HER LIABILITY UNDER THE LOAN

OR CONSENT TO THE RELEASE OF PARTS OF ANY SECURED PROPERTY FROM THE LIEN OF THE LENDING INSTITUTION.

S 2. Section 97-sss of the state finance law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

S 97-sss. Charter schools stimulus fund. There is hereby established in the joint custody of the comptroller and the commissioner of taxation and finance a fund to be known as the charter schools stimulus fund. Such fund shall consist of all monies made available pursuant to appropriation for this purpose, all monies transferred to such fund pursuant to law, and grants, gifts and devises and donations from any public or private source. The purpose of such fund is to provide discretionary financial support, including grants [and], loans AND LOAN GUARANTEES to charter school applicants and to charter schools for start-up costs and for costs associated with the acquisition, renovation, or construction of school facilities.

S 3. Severability. If any clause, sentence, paragraph, section or part of this act 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, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 4. This act shall take effect immediately.