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

4601

2009-2010 Regular Sessions

I N S E N A T E

April 24, 2009

Introduced by Sen. STEWART-COUSINS -- (at request of the State Comptroller) -- 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 bond anticipation notes; to amend the local finance law, in relation to the private sale of bonds; to amend the local finance law, in relation to notice of sale of bonds; to amend the local finance law, in relation to bid deposits for the public sale of bonds; to amend the local finance law, in relation to authorizing municipalities, school districts and district corporations to issue deficiency notes; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Paragraph b of section 23.00 of the local finance law, as amended by chapter 201 of the laws of 1994, is amended to read as follows:

b. Such notes shall mature at such time as the issuer may determine and may be renewed from time to time, provided, that in no event shall such notes or the renewals thereof extend more than two years beyond such original date of issue unless a portion of such notes or the renewals thereof shall be redeemed from a source other than the proceeds of bonds within two years from such original date of issue and unless a further portion thereof shall be so redeemed prior to the termination of each twelve months' period succeeding the date such original portion was so redeemed, if any of such notes, as renewed, are still outstanding at the termination of each such period, but such notes or the renewals thereof shall not extend more than five years beyond such original date of issue. Such redemption shall be consistent with the amortization requirements of article eight of the state constitution and section 21.00 of this [chapter] TITLE. If the finance board has determined to provide for substantially level or declining debt service on the bonds

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

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in anticipation of which such notes are authorized to be issued, such notes shall be redeemed in an amount at least equal in each year to the annual installment which would be paid in such year if such notes were serial bonds issued at a five percent rate of interest for the remaining period of probable usefulness of the object or purpose for which issued, or, if less, the remaining portion of the maximum authorized maturity of such bonds, and all annual debt service payments were equal over the life of such bonds. In any event, bond anticipation notes shall not be renewed after the receipt of the proceeds from the sale of the bonds in anticipation of which such notes were issued. Notwithstanding the provisions of this paragraph[,]: 1. bond anticipation notes issued in anticipation of the receipt of the proceeds of the sale of bonds for the purpose of providing moneys out of which to make loans to limited profit housing companies pursuant to article two of the private housing finance law, or loans to owners of existing multiple dwellings pursuant to article eight of the private housing finance law, or for the purpose of providing moneys for the effectuating of any urban renewal program or part thereof pursuant to the general municipal law, or the renewals of such notes, may extend not more than five years beyond the original date of issue of such notes; AND 2. RENEWALS OF BOND ANTICIPATION NOTES ISSUED ORIGINALLY DURING CALENDAR YEAR TWO THOUSAND FOUR OR TWO THOUSAND FIVE MAY NOT EXTEND MORE THAN SEVEN YEARS BEYOND THE ORIGINAL DATE OF ISSUE OF SUCH BOND ANTICIPATION NOTES.

S 2. Subdivision 5 of paragraph d of section 57.00 of the local finance law, as amended by chapter 413 of the laws of 1991, is amended to read as follows:

5. Prescribing the requirements for the alternative and permissive publication or circularization of notices for the sale of bonds of an issue not exceeding [one] FIVE million dollars, as permitted in section 63.00 of this chapter.

S 3. Paragraphs a and b of section 62.10 of the local finance law, paragraph a as amended by chapter 413 of the laws of 1991 and paragraph b as amended by chapter 179 of the laws of 1996, are amended to read as follows:

a. Notwithstanding any other provisions of this chapter, if the principal amount for an object or purpose, or objects or purposes, or class or classes thereof, to be financed by the issuance of bonds does not exceed [one] FIVE million dollars in the aggregate, a single bond, to be known as a statutory installment bond, may be issued for the full principal amount, if the issue is to be sold at private sale. Any such bond shall provide for the payment of both the principal and interest upon presentation of the bond for notation of such payments thereon, except that such a statutory installment bond may be issued and sold to the United States of America or any agency thereof in any amount and that such principal and interest shall be payable without such presentation.

b. A statutory installment bond, in bearer, if authorized by federal law, or registered form, shall be in terms, form and contents, substantially as follows:

Statutory Installment Bond	United States of America State of New York County of	$	(Here insert full amount of bond issue)

(Here insert name of the issuer)

(Here insert type of bond and year, such as "Highway Machinery Serial Bond--1976")

The (Here insert name of the issuer), in the County of _____, a (Here insert whether a municipality, school district, fire district or other district corporation) of the State of New York, hereby acknowledges itself indebted and for value received promises to pay to (Here insert "bearer" or the name of registered owner if the bond is issued in registered form) the principal sum of _____ Dollars ($_____) (in (_____) equal annual installments of _____ Dollars ($_____) on the _____ day of ____ in the years [19] 20__ __, to [19] 20 __, inclusive)

or

(in_____(___) annual installments (Here state the amounts, the annual principal payment date, and the years in which the principal payments will be made. No annual installment shall be more than fifty per centum in excess of the smallest prior installment unless the finance board has determined to provide for substantially level or declining annual debt service, in which case the aggregate amount of debt service payable in any year shall not exceed the lowest aggregate amount of debt service payable in any prior year by more than five percent))
and to pay interest on the unpaid balance of such principal sum at the rate of _____ per centum (_____%) per annum, semi-annually on the _____ days of _____ and _____ in each year from the date of this bond until it matures. Interest will not be paid on any installment of principal, or of interest, after the due date thereof. Both the installments of principal of and the interest on this bond will be paid to the (Here insert "bearer" or "registered owner" if the bond is issued in registered form) of this bond in lawful money of the United States* only upon presentation of this bond for notation of any such payment thereon* (omit language enclosed within asterisks when the bond is sold to the United States of America or an agency thereof) at the office of _____

(Here insert place or places of payment)

This bond is a statutory installment bond, the principal sum of which cannot exceed [One Million Dollars ($1,000,000)] FIVE MILLION DOLLARS ($5,000,000) unless it is issued and sold to the United States of America or any agency thereof, and is issued pursuant to section 62.10 of the Local Finance Law and pursuant to a bond resolution entitled "(Here insert title)", duly adopted by the (Here insert name of the finance board) of such (Here insert name of the issuer) on the _____ day of ___, [19] 20 __. This bond may not be converted into a coupon bond.

The faith and credit of such (Here insert name of the issuer) are hereby irrevocably pledged for the punctual payment of the installments of principal of and the interest on this bond according to its terms.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and statutes of the State of New York to exist, to have happened and to have been performed precedent to and in the issuance of this bond, exist, have happened and have been performed, and that this bond, together with all other indebtedness of such (Here insert name of the issuer) is within every debt and other limit prescribed by the Constitution and laws of such State.

In Witness Whereof, the (Here insert name of the issuer) has caused this bond to be signed by its (Here insert title of officer) and its

(Here insert title of officer), and its corporate seal to be hereunto affixed and attested by its (Here insert title of attesting officer) and to be dated as of the _____ day of _____, [19] 20 __.

(Name of municipality, school
district, fire district or
(Corporate Seal) other district corporation)
By: (Signature and title of officer)
and (Signature and title of officer)
Attest:
(Signature and title of attesting officer)

*PRINCIPAL PAYMENTS

Amount	Date Received	Received by
$_____	_____, [19] 20 __	_____ (Signature of person receiving payment)
$_____	_____, [19] 20 __	_____
	(continue as necessary)	

INTEREST PAYMENTS

Amount	Interest to	Received by
$_____	_____, [19] 20 __	_____ (Signature of person receiving payment)
$_____	_____, [19] 20 __	_____
	(continue as necessary)	

The notations of principal and interest payments may be made on the face of the bond, on the reverse side, or on a sheet attached thereto* (omit language enclosed within asterisks when the bond is sold to the United States of America or an agency thereof).

S 4. The section heading and paragraph a of section 63.00 of the local finance law, as amended by chapter 413 of the laws of 1991, are amended to read as follows:

Bond issues of [one million dollars or less] CERTAIN AMOUNTS. a. When sold at public sale, bonds of an issue not exceeding [one] FIVE million dollars, whether of a single issue or sold as a single issue pursuant to paragraph c of section 57.00 of this chapter, having a maximum maturity of not more than five years measured from the date of the bonds, need not be sold in accordance with the requirements of section 58.00 of this chapter for publication of the notice of sale but may be sold upon such publication or circularization of such notice as shall be prescribed by the state comptroller in the rule or order referred to in paragraph d of section 57.00 of this chapter.

S 5. Paragraph b of section 63.00 of the local finance law, as amended by chapter 413 of the laws of 1991, is amended to read as follows:

b. Bonds of an issue not exceeding [one] FIVE million dollars, whether of a single issue or sold as a single issue pursuant to paragraph c of section 57.00 of this chapter, may be sold at private sale without limitation as to rate of interest, provided, however, that the total amount of bonds which may be sold at private sale in any fiscal year of the municipality, school district or district corporation shall not exceed [one] FIVE million dollars, and provided further that if such bonds have

a maximum maturity of more than ten years measured from the date of the bonds, the issuer shall furnish the purchaser a written opinion, signed by any person regularly admitted to practice as an attorney and counselor in the courts of record of this state, that such bonds have been duly authorized and issued in accordance with the constitution and laws of this state and are valid and legally binding obligations of the issuer. Such legal opinion shall be furnished at the expense of the issuer and a duplicate original thereof shall be filed with the officer of the issuer who is required to keep a record of such bonds pursuant to section 163.00 of this chapter.

S 6. On or before December 31, 2011, the comptroller shall deliver to the governor, the chair of the senate finance committee and the chair of the assembly ways and means committee a report on the private sales of bonds conducted pursuant to paragraph b of section 63.00 of the local finance law from the effective date of this act through June 30, 2011. Such report may include recommendations with respect to such private sales of bonds as the comptroller deems appropriate. Every municipality, school district and district corporation which conducts such a private sale of bonds shall file a report of such sale with the comptroller at such time, in such manner, and containing such information as may be required by the comptroller.

S 7. Subparagraphs (b) and (d) of subdivision 2 of paragraph b of section 58.00 of the local finance law, as amended by chapter 179 of the laws of 1996, are amended to read as follows:

(b) In lieu of the statement of the time and date for the opening of bids required by subparagraph (a) of this subdivision, a statement (i) that the time and date for the opening of bids will be provided on not less than twenty-four hours prior notice by means of a supplemental notice of sale and indicating the manner in which such supplemental notice will be provided, or (ii) setting a time and date for the opening of bids, stating that notice of a change in the time or date for the opening of bids may be provided not less than [twenty-four hours] ONE HOUR prior to the time originally scheduled for the opening of bids by means of a supplemental notice of sale and indicating the manner in which such supplemental notice will be provided. Where notice is given that the time or date of a sale will be changed without specifying the new time or date, notice of the new time or date of sale must be provided by means of a second supplemental notice of sale at least [twenty-four hours] ONE HOUR prior to the new time for the opening of bids.

(d) The supplemental notice of sale shall be provided by transmittal over a definitive trade wire service of the municipal bond industry which, in general, makes available information regarding activity and sales of municipal bonds and is generally available to participants in the municipal bond industry, or by publication in the financial newspaper published and circulated in the city of New York which the state comptroller, in the rule or order referred to in paragraph d of section 57.00 of this article, shall designate for such publication. In addition, WHEN THE TIME AND DATE FOR THE OPENING OF BIDS IS DELAYED BY MORE THAN TWENTY-FOUR HOURS, public notice of the time and date set for the opening of bids in the supplemental notice of sale shall be given to the news media and shall be posted in one or more designated public locations within the issuing municipality, school district or district corporation at least twenty-four hours prior to the time and date set for the opening of bids; provided however, that such public notice shall not be construed to require publication as a legal notice.

S 8. Subdivision 3 of paragraph c of section 58.00 of the local finance law, as amended by chapter 469 of the laws of 1998, is amended to read as follows:

3. A requirement that as a condition precedent to the consideration of his OR HER bid, each bidder shall deposit with such official as the agency in charge of the sale may designate, a certified or cashier's check drawn upon an incorporated bank or trust company to the order of the municipality, school district or district corporation or such official, for [not] THE AMOUNT SPECIFIED IN THE NOTICE, BUT IN NO EVENT less than ONE-HALF OF one per centum of the amount of bonds to be bid for. Such notice may also provide that, in lieu of a certified or cashier's check, bidders may furnish as security CASH IN SUCH AMOUNT REMITTED BY WIRE TRANSFER TO AN ACCOUNT SPECIFIED IN THE NOTICE OR an eligible surety bond or an eligible letter of credit, approved by such official as to form, sufficiency, and manner of execution. For purposes of this section, "eligible surety bond" shall mean a bond executed by [a] AN insurance company authorized to do business in this state, the claims-paying ability of which is rated in the highest rating category by at least two nationally recognized statistical rating organizations; and "eligible letter of credit" shall mean an irrevocable letter of credit issued in favor of the municipality, school district or district corporation, for a term not to exceed ninety days by a bank, as that term is defined in section two of the banking law, whose commercial paper and other unsecured short-term debt obligations (or, in the case of a bank which is the principal subsidiary of a holding company, whose holding company's commercial paper and other unsecured short-term debt obligations) are rated in one of the three highest rating categories (based on the credit of such bank or holding company) by at least one nationally recognized statistical rating organization or by a bank that is in compliance with applicable federal minimum risk-based capital requirements.

S 9. Paragraph c of section 59.00 of the local finance law, as amended by chapter 469 of the laws of 1998, is amended to read as follows:

c. When the bidder to whom the bonds are to be awarded has been ascertained, the municipality, school district or district corporation shall promptly return all security to the persons furnishing the same, except the security furnished by such bidder. Such bidder shall be promptly notified of the award to him OR HER, and if he OR SHE refuses or neglects to pay either the agreed price for the bonds less the amount of any certified [or] CHECK, cashier's check OR CASH furnished as security, or the agreed price in full for the bonds if an eligible surety bond or eligible letter of credit was furnished as security as provided in subdivision three of paragraph c of section 58.00 of this [article] TITLE, the security furnished by him OR HER, in whatever form, shall be forfeited to and retained by or claimed against or drawn upon by, the municipality, school district or district corporation as liquidated damages for such neglect or refusal. However, if the notice of sale shall contain the statement set forth in paragraph e of section 58.00 of this [chapter] TITLE and if prior to the delivery of the bonds any income tax law of the United States of America shall provide that the interest on such bonds is taxable, or shall be taxable at a future date, for federal income tax purposes, then, at the request of such bidder the security accompanying his OR HER bid shall be returned to him OR HER and he OR SHE shall be relieved of his OR HER contractual obligations arising from the acceptance of his OR HER bid.

S 10. Section 10.00 of the local finance law, as amended by chapter 341 of the laws of 2007, is amended to read as follows:

S 10.00 Power of municipalities, school districts and district corporations to contract indebtedness. In addition to the power to contract indebtedness pursuant to sections 24.00, 25.00, 25.10 [and], 29.00 AND 29.20 of this article, a municipality, school district or district corporation shall have the power to contract indebtedness respectively for any municipal, school district or district corporation object or purpose set forth in paragraph a of section 11.00 of this title, or for a class of such objects or purposes when authorized under the provisions of section 31.00 of this article, if it is authorized by law to expend money for or to accomplish such object or purpose; provided, however, that it shall not be able to contract indebtedness to a greater extent than it is authorized by law to spend money for such object or purpose or class of such objects or purposes and provided also that this section shall not relieve any such unit of government of any duty imposed by law to include in its annual budget or tax levy or otherwise to pay from current funds all or part of any expenditure that it may make for such object or purpose or class of such objects or purposes.

S 11. Subdivision 40 of paragraph a of section 11.00 of the local finance law, as amended by chapter 837 of the laws of 1945, is amended to read as follows:

40. Miscellaneous expenditures. Any object or purpose set forth in section 29.00 OR 29.20 of this [chapter] ARTICLE, if such object or purpose is to be financed by the issuance of budget notes OR DEFICIENCY NOTES, three years.

S 12. The local finance law is amended by adding a new section 29.20 to read as follows:

S 29.20 DEFICIENCY NOTES. A. ANY MUNICIPALITY, SCHOOL DISTRICT OR DISTRICT CORPORATION MAY ISSUE DEFICIENCY NOTES DURING ANY FISCAL YEAR TO FINANCE A DEFICIENCY IN ANY FUND OR FUNDS ARISING FROM REVENUES BEING LESS THAN THE AMOUNT ESTIMATED IN THE BUDGET FOR SUCH CURRENT FISCAL YEAR. SUCH NOTES MAY BE ISSUED IN SUCH AMOUNT AS THE FINANCE BOARD SHALL DETERMINE TO BE NECESSARY, BUT NOT TO EXCEED FIVE PER CENTUM OF THE AMOUNT OF THE ANNUAL BUDGET OF SUCH MUNICIPALITY, SCHOOL DISTRICT OR DISTRICT CORPORATION.

B. DEFICIENCY NOTES MAY BE RENEWED FROM TIME TO TIME, BUT SUCH NOTES, INCLUDING THE RENEWALS THEREOF, SHALL MATURE NOT LATER THAN THE CLOSE OF THE FISCAL YEAR SUCCEEDING THE FISCAL YEAR IN WHICH SUCH NOTES ARE ISSUED. HOWEVER, SUCH NOTES, INCLUDING THE RENEWALS THEREOF, MAY MATURE NOT LATER THAN THE CLOSE OF THE SECOND FISCAL YEAR SUCCEEDING THE FISCAL YEAR IN WHICH SUCH NOTES ARE ISSUED, WHEN AUTHORIZED AND ISSUED DURING A FISCAL YEAR AT A TIME SUBSEQUENT TO THE DATE OF THE ADOPTION OF THE ANNUAL BUDGET FOR THE NEXT SUCCEEDING FISCAL YEAR, BY A MUNICIPALITY, SCHOOL DISTRICT OR DISTRICT CORPORATION IN WHICH THE TOTAL AMOUNT OF TAXES OR ASSESSMENTS LEVIED FOR A FISCAL YEAR IS DETERMINED PURSUANT TO AN ANNUAL BUDGET ADOPTED DURING THE FISCAL YEAR PRECEDING SUCH FISCAL YEAR.

C. DEFICIENCY NOTES SHALL BE REDEEMED OUT OF THE TAXES OR ASSESSMENTS LEVIED OR TO BE LEVIED FOR THE FISCAL YEAR IN WHICH THEY MATURE OR OUT OF OTHER REVENUES OF THAT FISCAL YEAR LEGALLY AVAILABLE FOR THAT PURPOSE.

D. NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL, SPECIAL OR LOCAL LAW, ANY MUNICIPALITY, SCHOOL DISTRICT OR DISTRICT CORPORATION, WHICH HAS THE POWER TO ISSUE DEFICIENCY NOTES UNDER THIS SECTION, SHALL TO THE SAME EXTENT HAVE THE POWER TO APPROPRIATE AND EXPEND MONEY RECEIVED FROM

THE PROCEEDS OF THE SALE OF DEFICIENCY NOTES FOR THE PURPOSES OF THE FUND OR FUNDS FOR WHICH SUCH NOTES ARE ISSUED.

E. THE PROCEEDS OF SUCH NOTES SHALL BE USED ONLY TO FINANCE A DEFICIENCY IN ANY FUND OR FUNDS ARISING FROM REVENUES BEING LESS THAN THE AMOUNT ESTIMATED IN THE BUDGET FOR THE CURRENT FISCAL YEAR OR, IN THE EVENT ALL OR A PORTION OF THE PROCEEDS ARE NOT EXPENDED FOR THAT PURPOSE, THE AMOUNT NOT SO EXPENDED SHALL BE USED ONLY FOR THE PAYMENT OF PRINCIPAL OF AND INTEREST ON SUCH NOTES. IN DETERMINING WHETHER ALL OR ANY PORTION OF THE PROCEEDS OF DEFICIENCY NOTES REMAINED UNEXPENDED AT THE CLOSE OF A FISCAL YEAR, THE MONEYS IN SUCH FUND OR FUNDS OTHER THAN THE PROCEEDS OF SUCH NOTES SHALL BE DEEMED TO BE EXPENDED PRIOR TO THE PROCEEDS OF SUCH NOTES.

F. ANY MUNICIPALITY, SCHOOL DISTRICT OR DISTRICT CORPORATION WHICH SHALL RENEW DEFICIENCY NOTES PURSUANT TO THE PROVISIONS OF PARAGRAPH B OF THIS SECTION, OR WHICH SHALL ISSUE DEFICIENCY NOTES IN TWO OR MORE SUCCESSIVE FISCAL YEARS, SHALL BE SUBJECT TO THE REQUIREMENTS OF PARAGRAPHS C, D, E AND F OF SECTION 10.10 OF THIS ARTICLE FOR THREE YEARS COMMENCING WITH THE FISCAL YEAR IN WHICH SUCH NOTES WERE RENEWED OR EACH SECOND SUCCESSIVE FISCAL YEAR IN WHICH SUCH NOTES WERE ISSUED.

S 13. The local finance law is amended by adding a new section 40.10 to read as follows:

S 40.10 DEFICIENCY NOTE RESOLUTION; FORM AND CONTENTS; AUTHORIZATION THEREOF. A. THE ISSUANCE OF DEFICIENCY NOTES OR RENEWALS THEREOF SHALL BE AUTHORIZED BY A "DEFICIENCY NOTE RESOLUTION". EACH SUCH RESOLUTION SHALL BE PROPERLY DATED AND SHALL BEAR A TITLE WHICH WILL INDICATE THAT IT RELATES TO A DEFICIENCY NOTE.

B. ANY MUNICIPALITY, SCHOOL DISTRICT OR DISTRICT CORPORATION MAY ADOPT ONE OR MORE DEFICIENCY NOTE RESOLUTIONS AUTHORIZING THE ISSUANCE OF DEFICIENCY NOTES FOR THE SPECIFIC OBJECT OR PURPOSE OF COVERING A DEFICIENCY IN ANY FUND OR FUNDS ARISING FROM REVENUES BEING LESS THAN THE AMOUNT ESTIMATED IN THE BUDGET FOR THE CURRENT FISCAL YEAR OF THE MUNICIPALITY, SCHOOL DISTRICT OR DISTRICT CORPORATION.

C. A DEFICIENCY NOTE RESOLUTION SHALL CONTAIN, IN SUBSTANCE, AT LEAST THE FOLLOWING PROVISIONS:

1. A STATEMENT OF THE SPECIFIC OBJECT OR PURPOSE FOR WHICH THE DEFICIENCY NOTES TO BE AUTHORIZED BY SUCH RESOLUTION ARE TO BE ISSUED;

2. A STATEMENT OF THE AMOUNT OF DEFICIENCY NOTES TO BE ISSUED, THE AMOUNT AND THE CAUSE OF THE DEFICIENCY IN REVENUES, AND THAT NO OTHER SOURCE OF FINANCING IS AVAILABLE;

3. A STATEMENT OF THE PERIOD OF MATURITY OF SUCH NOTES; AND

4. IF SUCH NOTES ARE TO BE ISSUED IN RENEWAL OF OTHER NOTES, A STATEMENT THAT THE DATE OF MATURITY OF SUCH NOTES SHALL NOT EXTEND BEYOND THE APPLICABLE PERIOD PROVIDED IN SECTION 29.20 OF THIS ARTICLE FOR THE MATURITY OF SUCH NOTES.

D. EVERY DEFICIENCY NOTE RESOLUTION SHALL BE ADOPTED BY AT LEAST A MAJORITY VOTE OF THE VOTING STRENGTH OF THE FINANCE BOARD. A TWO-THIRDS VOTE OF THE VOTING STRENGTH OF THE FINANCE BOARD SHALL BE REQUIRED TO ADOPT A DEFICIENCY NOTE RESOLUTION AUTHORIZING THE ISSUANCE OF RENEWAL NOTES OR AUTHORIZING THE ISSUANCE OF DEFICIENCY NOTES IN A YEAR NEXT SUCCEEDING A YEAR IN WHICH DEFICIENCY NOTES WERE ISSUED.

S 14. This act shall take effect immediately; provided, however, that the provisions of sections three and five of this act shall expire June 30, 2012 when upon such date the provisions of such sections shall be deemed repealed.