STATE OF NEW YORK

16

Extraordinary Session

IN SENATE

June 23, 2009

Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the local finance law, in relation to the sale of bonds and notes of the city of New York, the refunding of bonds, the down payment for projects financed by bonds, variable rate debt, and interest rate exchange agreements of the city of New York; to amend the New York state financial emergency act for the city of New York, in relation to a pledge and agreement of the state; and to amend chapter 142 of the laws of 2004, amending the local finance law relating to interest rate exchange agreements of the city of New York and refunding bonds of such city, in relation to the effectiveness thereof

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

Section 1. The opening paragraph of paragraph (a) of section 54.10 of the local finance law, as amended by chapter 117 of the laws of 2008, is amended to read as follows:

To facilitate the marketing of any issue of bonds or notes of the city of New York issued on or before June thirtieth, two thousand [nine] TEN, the mayor and comptroller of such city may, subject to the approval of the state comptroller and the limitations on private sales of bonds and notes, respectively, provided by law:

S 2. The opening paragraph of paragraph a of section 57.00 of the local finance law, as amended by chapter 117 of the laws of 2008, is amended to read as follows:

Bonds shall be sold only at public sale and in accordance with the procedure set forth in this section and sections 58.00 and 59.00 of this title, except as otherwise provided in this paragraph. Bonds may be sold at private sale to the United States government or any agency or instrumentality thereof, the state of New York municipal bond bank agency, to any sinking fund or pension fund of the municipality, school district or

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

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district corporation selling such bonds, or, in the case of sales by the city of New York prior to July first, two thousand [nine] TEN, also to the municipal assistance corporation for the city of New York or to any other purchaser with the consent of the mayor and the comptroller of such city and approval of the state comptroller, or, in the case of sales by the county of Nassau prior to December thirty-first, two thousand seven, also to the Nassau county interim finance authority with the approval of the state comptroller, or, in the case of sales by the city of Buffalo prior to June thirtieth, two thousand thirty-seven, also to the Buffalo fiscal stability authority with the approval of the state comptroller, or, in the case of bonds or other obligations of a municipality issued for the construction of any sewage treatment works, sewage collecting system, storm water collecting system, water management facility, air pollution control facility or solid waste disposal facility, also to the New York state environmental facilities corporation, or, in the case of bonds or other obligations of a school district or a city acting on behalf of a city school district in a city having a population in excess of one hundred twenty-five thousand but less than one million inhabitants according to the latest federal census, issued to finance or refinance the cost of school district capital facilities or school district capital equipment, as defined in section sixteen hundred seventy-six of the public authorities law, also to the dormitory authority of the state of New York. Bonds of a river improvement or drainage district established by or under the supervision of the department of environmental conservation may be sold at private sale to the State of New York as investments for any funds of the state which by law may be invested, provided, however, that the rate of interest on any such bonds so sold shall be approved by the water power and control commission and the state comptroller. Bonds may also be sold at private sale as provided in section 63.00 of this title. No bonds shall be sold on option or on a deferred payment plan, except that options to purchase, effective for a period not exceeding one year, may be given:

S 3. Subdivision 3 of paragraph g of section 90.00 of the local finance law, as amended by chapter 117 of the laws of 2008, is amended to read as follows:

3. Outstanding bonds may, pursuant to a power to recall and redeem or with the consent of the holders thereof, be exchanged for refunding bonds (i) if the refunding bonds are to bear interest at a rate equal to or lower than that borne by the bonds to be refunded or (ii) if, in the case of the city of New York prior to July first, two thousand [nine] TEN, the annual payment required for principal and interest on the refunding bond is less than the annual payment required for principal and interest on the bond to be refunded, in each case such annual payments to be determined by dividing the total principal and interest payments due over the remaining life of the bond by the number of years to maturity of the bond or (iii) if the bonds to be refunded were issued by the city of New York after June thirtieth, nineteen hundred seventy-eight and prior to July first, two thousand [nine] TEN and contain covenants referring to the existence of the New York state financial control board for the city of New York or any other covenants relating to matters other than the prompt payment of principal and interest on the obligations when due and the refunding bond omits or modifies any such covenant.

S 4. Subdivision 8 of paragraph d of section 107.00 of the local finance law, as amended by chapter 117 of the laws of 2008, is amended to read as follows:

8. Notwithstanding any other provision of law, the financing by the city of New York prior to July first, two thousand [nine] TEN of any object or purpose which has a period of probable usefulness determined by law by the issuance of any bonds or notes, including (i) the issuance of bonds or notes to obtain reimbursement for funds heretofore advanced for the object or purpose for which the bonds or notes are being issued, (ii) the issuance of bonds or notes to redeem notes previously issued for the object or purpose for which the bonds or notes are being issued or (iii) the issuance of bonds to refund bonds previously issued for the object or purpose for which bonds are being issued.

S 5. The closing paragraph of paragraph a of section 54.90 of the local finance law, as amended by chapter 117 of the laws of 2008, is amended to read as follows:

Notwithstanding the foregoing, whenever in the judgment of the finance board of the city of New York the interest of such city would be served thereby, the city of New York may without further approval issue bonds or notes, on or before July fifteenth, two thousand [nine] TEN, with interest rates that vary in accordance with a formula or procedure and are subject to a maximum rate of interest set forth or referred to in the bonds or notes and may provide the holders thereof with such rights to require the city or other persons to purchase such bonds or notes or renewals thereof from the proceeds of the resale thereof or otherwise from time to time prior to the final maturity of such bonds or notes as the finance board of the city of New York may determine and the city may resell, at any time prior to final maturity, any such bonds or notes acquired as a result of the exercise of such rights; provided, however, that at no time shall the total principal amount of bonds and notes issued by the city of New York pursuant to this paragraph (other than bonds and notes (1) bearing interest at rates and for periods of time that are specified without reference to future events or contingencies, or (2) described in section 136.00 of this article) exceed twenty-five percent of the limit prescribed by section 104.00 of this article.

S 6. The opening paragraph of subdivision 1 of paragraph d of section 54.90 of the local finance law, as amended by chapter 117 of the laws of 2008, is amended to read as follows:

On or before July fifteenth, two thousand [nine] TEN the mayor and comptroller of the city of New York may:

S 7. Subdivision 1 of section 10-a of section 2 of chapter 868 of the laws of 1975, constituting the New York state financial emergency act for the city of New York, as amended by chapter 117 of the laws of 2008, is amended to read as follows:

1. In the event that after the date on which the provisions of this act become operative, any notes or bonds are issued by the city prior to July 1, [2009] 2010, or any bonds are issued by a state financing agency, the state of New York hereby authorizes the city and authorizes and requires such state financing agency to include a pledge and agreement of the state of New York in any agreement made by the city or such state financing agency with holders or guarantors of such notes or bonds that the state will not take any action which will (a) substantially impair the authority of the board during a control period, as defined in subdivision twelve of section two of this act as in effect on the date such notes or bonds are issued (i) to approve, disapprove, or modify any financial plan or financial plan modification, including the revenue projections (or any item thereof) contained therein, subject to the standards set forth in paragraphs a, c, d, e and f of subdivision one of section eight of this act as in effect on the date such notes or bonds

are issued and paragraph b of such subdivision as in effect from time to time, (ii) to disapprove a contract of the city or a covered organization if the performance of such contract would be inconsistent with the financial plan or to approve or disapprove proposed short-term or long-term borrowing of the city or a covered organization or any agreement or other arrangement referred to in subdivision four of section seven of this act, or (iii) to establish and adopt procedures with respect to the deposit in and disbursement from the board fund of city revenues; (b) substantially impair the authority of the board to review financial plans, financial plan modifications, contracts of the city or the covered organizations and proposed short-term or long-term borrowings of the city and the covered organizations; (c) substantially impair the independent maintenance of a separate fund for the payment of debt service on bonds and notes of the city; (d) alter the composition of the board so that the majority of the voting members of the board are not officials of the state of New York elected in a state-wide election or appointees of the governor; (e) terminate the existence of the board prior to the time to be determined in accordance with section thirteen of this act as in effect on the date such notes or bonds are issued; (f) substantially modify the requirement that the city's financial statements be audited by a nationally recognized independent certified public accounting firm or consortium of firms and that a report on such audit be furnished to the board; or (g) alter the definition of a control period set forth in subdivision twelve of section two of this act, as in effect on the date such notes or bonds are issued, or substantially alter the authority of the board, as set forth in said subdivision to reimpose or terminate a control period; provided, however, that the foregoing pledge and agreement shall be of no further force and effect if at any time (i) there is on deposit in a separate trust account with a bank, trust company or other fiduciary sufficient moneys or direct obligations of the United States or obligations guaranteed by the United States, the principal of and/or interest on which will provide moneys to pay punctually when due at maturity or prior to maturity by redemption, in accordance with their terms, all principal of and interest on all outstanding notes and bonds of the city or such state financing agency containing this pledge and agreement and irrevocable instructions from the city or such state financing agency to such bank, trust company or other fiduciary for such payment of such principal and interest with such moneys shall have been given, or (ii) such notes and bonds, together with interest thereon, have been paid in full at maturity or have otherwise been refunded, redeemed, defeased, or discharged; and provided further that the foregoing pledge and agreement shall be of full force and effect upon its inclusion in any agreement made by the city or state financing agency with holders or guarantors of such notes or bonds.

Upon payment for such obligations issued pursuant to this act by the original and all subsequent holders inclusion of the foregoing covenant shall be deemed conclusive evidence of valuable consideration received by the state and city for such covenant and of reliance upon such pledge and agreement by any such holder. The state hereby grants any such benefited holder the right to sue the state in a court of competent jurisdiction and enforce this covenant and agreement and waives all rights of defense based on sovereign immunity in such an action or suit.

S 8. Section 5 of chapter 142 of the laws of 2004, amending the local finance law relating to interest rate exchange agreements of the city of New York and refunding bonds of such city, as amended by chapter 117 of the laws of 2008, is amended to read as follows:

S 5. This act shall take effect immediately, provided, that section three of this act shall expire and be deemed repealed July 15, [2009] 2010.

S 9. Separability. 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 10. This act shall take effect immediately.