

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

5562--A

2009-2010 Regular Sessions

I N S E N A T E

May 18, 2009

Introduced by Sens. HUNTLEY, ADDABBO, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the New York state medical care facilities finance agency act, in relation to providing for the refinancing of outstanding indebtedness of, and additional secured borrowing by, certain not-for-profit hospitals

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

1 Section 1. Section 2872 of the public health law is amended by adding
2 a new subdivision 3-b to read as follows:
3 3-B. "ELIGIBLE SECURED HOSPITAL BORROWER". A NOT-FOR-PROFIT HOSPITAL
4 CORPORATION ORGANIZED UNDER THE LAWS OF THIS STATE, WHICH HAS FINANCED
5 OR REFINANCED A PROJECT OR PROJECTS PURSUANT TO THE FORMER SECTION
6 SEVEN-A OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS
7 OF NINETEEN HUNDRED SEVENTY-THREE CONSTITUTING THE NEW YORK STATE
8 MEDICAL CARE FACILITIES FINANCE AGENCY ACT, AND FOR WHICH SPECIAL HOSPI-
9 TAL PROJECT BONDS, AS DEFINED IN FORMER PARAGRAPH (D) OF SUBDIVISION
10 THREE OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED
11 NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE, REMAIN
12 OUTSTANDING AND SHALL ALSO INCLUDE, FOR THE PURPOSES OF MAKING SUPPLE-
13 MENTAL MORTGAGE LOANS AS DEFINED IN SUBDIVISION TWELVE-A OF SECTION
14 THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF
15 NINETEEN HUNDRED SEVENTY-THREE, BROOKDALE HOSPITAL MEDICAL CENTER AND
16 JAMAICA HOSPITAL.
17 S 2. Subdivision 4 of section 2872 of the public health law, as
18 amended by chapter 389 of the laws of 1987, is amended to read as
19 follows:
20 4. "Project". "Hospital project". A specific work or improvement,
21 including lands, buildings, improvements, fixtures and articles of

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

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1 personal property, acquired, constructed, rehabilitated, owned and oper-
2 ated by an eligible borrower pursuant to this article, to provide hospi-
3 tal or other facilities for the prevention, diagnosis or treatment of
4 human disease, pain, injury, disability, deformity or physical condi-
5 tion, and for facilities incidental or appurtenant thereto. "Project"
6 and "Hospital project" shall also mean the refinancing of existing
7 indebtedness which constitutes a lien or other encumbrance upon the real
8 property or assets of the eligible borrower whether or not such refi-
9 nancing is related to the construction, acquisition or rehabilitation of
10 a specific work or improvement. The term "project" or "hospital project"
11 as used in this subdivision shall also mean a separate work or improve-
12 ment, including lands, buildings, fixtures and personal property related
13 thereto owned and operated by an eligible borrower to provide such
14 services, functions, capabilities and facilities as may be convenient or
15 [deisrable] DESIRABLE for the operation of a hospital or other such
16 facility. THE TERM "PROJECT" OR "HOSPITAL PROJECT", IN THE CASE OF A
17 SUPPLEMENTAL MORTGAGE LOAN AS DEFINED IN SUBDIVISION TWELVE-A OF SECTION
18 THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF
19 NINETEEN HUNDRED SEVENTY-THREE, SHALL ALSO MEAN, IN AN AMOUNT OF EIGHTY
20 MILLION DOLLARS, FOR ANY PURPOSE APPROVED BY THE COMMISSIONER PURSUANT
21 TO SECTION TWENTY-EIGHT HUNDRED SEVENTY-FOUR-B OF THIS ARTICLE, INCLUD-
22 ING BUT NOT LIMITED TO PAYMENTS OF AMOUNTS OUTSTANDING ON EXISTING MORT-
23 GAGE LOANS, REPAYMENT OF RESTRUCTURING LOANS, PAYMENT OF OPERATING COSTS
24 ASSOCIATED WITH EXPANSION OF CAPACITY TO ADDRESS HOSPITAL CLOSURES,
25 REFINANCING OF CAPITAL EXPENSES INITIALLY FUNDED FROM OPERATIONS,
26 PAYMENT OF ARREARS TO EMPLOYEE BENEFIT FUNDS, PAYMENT TOWARD PROFES-
27 SIONAL LIABILITY PREMIUMS OR UNFUNDED PROFESSIONAL LIABILITIES, PAYMENT
28 OF ACCUMULATED HISTORIC BAD DEBT AND CHARITY CARE LOSSES, PURCHASE OF AN
29 ELIGIBLE SECURED HOSPITAL BORROWER'S OUTSTANDING SPECIAL HOSPITAL
30 PROJECT BONDS, OR PURCHASE OF ANCILLARY FACILITIES FINANCED BY OTHER
31 DEBT OF THE ELIGIBLE SECURED HOSPITAL BORROWER OR A RELATED ENTITY.

32 S 3. The public health law is amended by adding a new section 2874-b
33 to read as follows:

34 S 2874-B. REFINANCING MORTGAGE LOANS AND MAKING SUPPLEMENTAL MORTGAGE
35 LOANS TO ELIGIBLE SECURED HOSPITAL BORROWERS. ELIGIBLE SECURED HOSPITAL
36 BORROWERS, AS DEFINED IN SUBDIVISION THREE-B OF SECTION TWENTY-EIGHT
37 HUNDRED SEVENTY-TWO OF THIS ARTICLE, SHALL BE AUTHORIZED TO REFINANCE
38 ANY MORTGAGE LOAN FINANCED WITH THE PROCEEDS OF SPECIAL HOSPITAL PROJECT
39 BONDS, WHICH LOANS ARE OUTSTANDING AS OF THE EFFECTIVE DATE OF THIS
40 SECTION AND TO FINANCE SUPPLEMENTAL MORTGAGE LOANS, AS DEFINED IN SUBDI-
41 VISION TWELVE-A OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED
42 NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE. A MORTGAGE
43 LOAN TO AN ELIGIBLE SECURED HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION
44 THREE-B OF SECTION TWENTY-EIGHT HUNDRED SEVENTY-TWO OF THIS ARTICLE, OR
45 SUPPLEMENTAL MORTGAGE LOAN, AS DEFINED IN SUBDIVISION TWELVE-A OF
46 SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE
47 LAWS OF NINETEEN HUNDRED SEVENTY-THREE, MADE BY THE MEDICAL CARE FACILI-
48 TIES FINANCE AGENCY, AND ANY SUCCESSOR THERETO, MAY BE FINANCED OR REFI-
49 NANCED FOR A TERM NOT LONGER THAN THE TERM APPROVED BY THE COMMISSIONER
50 PURSUANT TO THIS SECTION OR IF THE BONDS ISSUED TO FINANCE SUCH MORTGAGE
51 LOAN OR SUPPLEMENTAL MORTGAGE LOAN ARE ISSUED AS TAX-EXEMPT BONDS, SUCH
52 SHORTER TERM AS IS NECESSARY TO ASSURE THAT THE INTEREST ON BONDS ISSUED
53 TO FINANCE OR REFINANCE THE MORTGAGE LOAN WILL BE EXCLUDABLE FROM THE
54 GROSS INCOME OF THE HOLDERS THEREOF FOR FEDERAL TAX PURPOSES, PROVIDED
55 THAT IN NO EVENT SHALL THE TERM OF SUCH REFINANCING LOAN EXCEED THIRTY
56 YEARS FROM THE DATE OF THE ISSUANCE OF THE REFUNDING BONDS AND SHALL

1 INCLUDE ALL COSTS ASSOCIATED WITH THE FINANCING OR REFINANCING OF
2 INDEBTEDNESS. ALL FINANCING OR REFINANCING APPLICATIONS BY ELIGIBLE
3 SECURED HOSPITAL BORROWERS SHALL BE APPROVED BY THE ELIGIBLE SECURED
4 HOSPITAL BORROWER'S BOARD AND THE COMMISSIONER. SUCH FINANCING OR REFI-
5 NANCING APPLICATIONS SHALL INCLUDE ANALYTICAL EVIDENCE SUFFICIENT TO
6 DEMONSTRATE THAT THE PROPOSED FINANCING OR REFINANCING IS BEING UNDER-
7 TAKEN FOR SOUND BUSINESS PURPOSES AND IN FURTHERANCE OF MAINTAINING OR
8 IMPROVING THE FINANCIAL CONDITION OF THE HOSPITAL. SUCH EVIDENCE MAY
9 INCLUDE BUT IS NOT LIMITED TO: PRESENT VALUE ANALYSIS OF DEBT SERVICE
10 PAYMENTS, INCLUDING WHERE APPLICABLE, PRESENT VALUE ANALYSIS THAT SEGRE-
11 GATES DEBT SERVICE PAYMENTS BETWEEN PRINCIPAL AND INTEREST COMPONENTS;
12 FINANCIAL PRO FORMAS THAT PROJECT THE BORROWER'S REVENUES, EXPENSES AND
13 FINANCIAL POSITION FOR A PERIOD DETERMINED BY THE COMMISSIONER; OR ANY
14 OTHER ANALYSIS OR INFORMATION THE COMMISSIONER DEEMS NECESSARY TO EVALU-
15 ATE THE APPLICATION AND TO ASSESS THE FINANCIAL ABILITY OF THE ELIGIBLE
16 SECURED HOSPITAL BORROWER TO REPAY THE MORTGAGE LOAN OR SUPPLEMENTAL
17 MORTGAGE LOAN ACCORDING TO ITS TERMS. AS A CONDITION OF SUCH PRIOR
18 APPROVAL, THE COMMISSIONER SHALL APPROVE THE PRINCIPAL AMOUNT OF THE
19 FINANCING OR REFINANCING LOAN IN THE AMOUNT PROVIDED IN SECTION TWELVE-A
20 OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF
21 THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE, AS AMENDED, PROVIDED THAT
22 SUCH AMOUNT MAY BE REDUCED ONLY TO THE EXTENT THAT GRANT FUNDING IS MADE
23 AVAILABLE TO THE ELIGIBLE SECURED HOSPITAL BORROWERS THROUGH HEAL NY OR
24 OTHER PROGRAMS TO FINANCE EMERGENCY ROOM OR OTHER MAJOR CAPITAL PROJECTS
25 OR OTHER USES PERMITTED UNDER THIS SECTION, AS PROPOSED BY THE ELIGIBLE
26 HOSPITAL BORROWER, AND THE MAXIMUM TERM THEREOF, AND SHALL REQUIRE THE
27 ELIGIBLE SECURED HOSPITAL BORROWER TO GIVE THE DEPARTMENT A WRITTEN
28 UNDERTAKING, ACCEPTABLE TO THE COMMISSIONER, THAT IT WILL NOT CLAIM
29 ADDITIONAL REIMBURSEMENT UNDER THE MEDICAL ASSISTANCE PROGRAM AS ESTAB-
30 LISHED UNDER TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW DUE
31 TO INTEREST PAYMENTS ON REFINANCING INDEBTEDNESS. ANY SUCH ADDITIONAL
32 INTEREST PAYMENTS ON REFINANCED INDEBTEDNESS COVERED BY SUCH WRITTEN
33 UNDERTAKING SHALL NOT BE CONSIDERED AS ALLOWABLE COSTS UNDER THE MEDICAL
34 ASSISTANCE PROGRAM AND SHALL NOT BE INCLUDED IN REIMBURSEMENT RATES OF
35 PAYMENT UNDER ARTICLE TWENTY-EIGHT OF THIS CHAPTER. THE FOREGOING SHALL
36 NOT PRECLUDE THE REIMBURSEMENT OF CAPITAL COSTS ATTRIBUTABLE TO A
37 PROJECT FINANCED BY MEANS OF A SUPPLEMENTAL MORTGAGE LOAN, AS DEFINED IN
38 SUBDIVISION TWELVE-A OF SECTION THREE OF SECTION ONE OF CHAPTER THREE
39 HUNDRED NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE, WHICH
40 SHALL BE REIMBURSED IN A MANNER CONSISTENT WITH THE REIMBURSEMENT OF
41 OTHER CAPITAL COSTS.

42 S 4. Subdivision 3 of section 3 of section 1 of chapter 392 of the
43 laws of 1973, constituting the New York state medical care facilities
44 finance agency act, is amended by adding a new paragraph (d-1) to read
45 as follows:

46 (D-1) "SPECIAL HOSPITAL PROJECT BONDS" SHALL MEAN TAXABLE OR TAX-EX-
47 EMPT BONDS ISSUED PURSUANT TO SECTION SEVEN-C OF THIS ACT FOR THE
48 PURPOSE OF REFINANCING OUTSTANDING MORTGAGE LOANS OR FINANCING SUPPLE-
49 MENTAL MORTGAGE LOANS OF ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED
50 IN SUBDIVISION SIX-C OF THIS SECTION, PURSUANT TO THIS ACT.

51 S 5. Section 3 of section 1 of chapter 392 of the laws of 1973,
52 constituting the New York state medical care facilities finance agency
53 act, is amended by adding a new subdivision 6-c to read as follows:

54 6-C. "ELIGIBLE SECURED HOSPITAL BORROWER" SHALL MEAN A NOT-FOR-PROFIT
55 HOSPITAL CORPORATION ORGANIZED UNDER THE LAWS OF THIS STATE, WHICH HAS
56 FINANCED OR REFINANCED A PROJECT OR PROJECTS PURSUANT TO FORMER SECTION

SEVEN-A OF THIS ACT, AND FOR WHICH SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN FORMER PARAGRAPH (D) OF SUBDIVISION THREE OF THIS SECTION, REMAIN OUTSTANDING AND SHALL ALSO INCLUDE, FOR THE PURPOSES OF MAKING SUPPLEMENTAL MORTGAGE LOANS AS DEFINED IN SUBDIVISION TWELVE-A OF THIS SECTION, BROOKDALE HOSPITAL MEDICAL CENTER AND JAMAICA HOSPITAL.

S 6. Subdivision 10 of section 3 of section 1 of chapter 392 of the laws of 1973, constituting the New York state medical care facilities finance agency act, as amended by chapter 803 of the laws of 1984, is amended to read as follows:

10. "Hospital project" shall mean a specific work or improvement INCLUDING HOSPITAL PROJECT COSTS FINANCED WITH THE PROCEEDS OF A SUPPLEMENTAL MORTGAGE LOAN or the refinancing of existing indebtedness which constitutes a lien or encumbrance upon the real property or assets of the eligible borrower, OR THE REFINANCING OF EXISTING INDEBTEDNESS OF AN ELIGIBLE SECURED HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION SIX-C OF THIS SECTION, FOR WHICH SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN FORMER PARAGRAPH (D) OF SUBDIVISION THREE OF THIS SECTION, REMAIN OUTSTANDING whether or not such refinancing is related to the construction, acquisition or rehabilitation of a specified work or improvement undertaken by a non-profit hospital corporation or a non-profit medical corporation, constituting an eligible borrower in accordance with the provisions of article twenty-eight-B of the public health law. THE TERM "HOSPITAL PROJECT" AS USED IN THIS SUBDIVISION SHALL ALSO MEAN A SEPARATE WORK OR IMPROVEMENT OWNED AND OPERATED BY AN ELIGIBLE BORROWER TO PROVIDE SUCH SERVICES, FUNCTIONS, CAPABILITIES AND FACILITIES AS MAY BE CONVENIENT OR DESIRABLE FOR THE OPERATION OF A HOSPITAL OR OTHER SUCH FACILITY INCLUDING HOSPITAL PROJECTS, AS DEFINED IN SUBDIVISION FOUR OF SECTION TWENTY-EIGHT HUNDRED SEVENTY-TWO OF THE PUBLIC HEALTH LAW.

S 7. Subdivision 11 of section 3 of section 1 of chapter 392 of the laws of 1973, constituting the New York state medical care facilities finance agency act, is amended to read as follows:

11. "Hospital project cost" shall mean the sum total of all costs incurred by a non-profit hospital corporation or a non-profit medical corporation, constituting an eligible borrower undertaking a project as approved by the commissioner in accordance with the provisions of article twenty-eight-B of the public health law, OR, IN THE CASE OF ELIGIBLE SECURED HOSPITAL BORROWERS, ALL COSTS INCURRED IN CONNECTION WITH THE REFINANCING OF EXISTING INDEBTEDNESS OR AUTHORIZED TO BE FINANCED UNDER A SUPPLEMENTAL MORTGAGE LOAN AS APPROVED BY THE COMMISSIONER PURSUANT TO SECTION TWENTY-EIGHT HUNDRED SEVENTY-FOUR-B OF THE PUBLIC HEALTH LAW.

S 8. Subdivision 12 of section 3 of section 1 of chapter 392 of the laws of 1973, constituting the New York state medical care facilities finance agency act, as amended by chapter 156 of the laws of 1974, is amended to read as follows:

12. "Mortgage loan" shall mean a loan made by the agency to an eligible borrower in an amount not to exceed the total hospital project cost and secured by a first mortgage lien on the real property of which the hospital project consists and the personal property attached to or used in connection with the construction, acquisition, reconstruction, rehabilitation, improvement or operation of the hospital project. Such loan may be further secured by such a lien upon other real property owned by the eligible borrower. Notwithstanding the foregoing provisions of this subdivision or any other provisions of this act to the contrary, any personal property may be excluded from the lien of the mortgage provided (a) the commissioner [of health] finds that such property is not essen-

1 tial for the rendition of required hospital services as such term is
2 defined in article twenty-eight of the public health law, and (b) the
3 agency consents to such exclusion.

4 The term "mortgage loan" shall also mean and include a loan made by
5 the agency to a limited-profit nursing home company in an amount not to
6 exceed ninety-five [percentum] PER CENTUM of the nursing home project
7 cost, or to a non-profit nursing home company in an amount not to exceed
8 the total nursing home project cost, and secured by a first mortgage
9 lien on the real property of which the nursing home project consists and
10 the personal property attached to or used in connection with the
11 construction, acquisition, reconstruction, rehabilitation, improvement
12 or operation of the nursing home project. Notwithstanding the foregoing
13 provisions of this subdivision or any other provision of this article to
14 the contrary, any personal property may be excluded from the lien of the
15 mortgage provided (a) the commissioner finds that such property is not
16 essential for the nursing home project as such term is defined in arti-
17 cle twenty-eight-A of the public health law, and (b) the agency consents
18 to such exclusion.

19 THE TERM "MORTGAGE LOAN" SHALL ALSO MEAN AND INCLUDE A LOAN MADE TO AN
20 ELIGIBLE SECURED HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION SIX-C OF
21 THIS SECTION, TO REFINANCE OUTSTANDING INDEBTEDNESS PURSUANT TO THIS
22 ACT.

23 S 9. Section 3 of section 1 of chapter 392 of the laws of 1973,
24 constituting the New York state medical care facilities finance agency
25 act, is amended by adding a new subdivision 12-a to read as follows:

26 12-A. "SUPPLEMENTAL MORTGAGE LOAN" SHALL MEAN A MORTGAGE LOAN MADE TO
27 AN ELIGIBLE SECURED HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION SIX-C
28 OF THIS SECTION, AFTER THE THIRTY-FIRST DAY OF MARCH, TWO THOUSAND NINE
29 IN AN AMOUNT OF EIGHTY MILLION DOLLARS FOR BROOKDALE HOSPITAL MEDICAL
30 CENTER AND IN AN AMOUNT OF EIGHTY MILLION DOLLARS FOR JAMAICA HOSPITAL
31 FOR THE PAYMENT OF HOSPITAL PROJECT COSTS APPROVED BY THE COMMISSIONER
32 PURSUANT TO SECTION TWENTY-EIGHT HUNDRED SEVENTY-FOUR-B OF THE PUBLIC
33 HEALTH LAW.

34 S 10. Section 5 of section 1 of chapter 392 of the laws of 1973,
35 constituting the New York state medical care facilities finance agency
36 act, is amended by adding a new subdivision 10-d to read as follows:

37 10-D. TO MAKE MORTGAGE LOANS, SUPPLEMENTAL MORTGAGE LOANS AND PROJECT
38 LOANS TO NON-PROFIT HOSPITAL CORPORATIONS AND NON-PROFIT MEDICAL CORPO-
39 RATIONS CONSTITUTING ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN
40 SUBDIVISION SIX-C OF SECTION THREE OF THIS ACT, AND TO UNDERTAKE COMMIT-
41 MENTS TO MAKE ANY SUCH MORTGAGE LOANS, SUPPLEMENTAL MORTGAGE LOANS AND
42 PROJECT LOANS;

43 S 11. Section 1 of chapter 392 of the laws of 1973, constituting the
44 New York state medical care facilities finance agency act, is amended by
45 adding a new section 7-c to read as follows:

46 S 7-C. SECURED HOSPITAL PROJECTS RESERVE FUNDS AND APPROPRIATIONS. 1.
47 SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN PARAGRAPH (D-1) OF SUBDI-
48 VISION THREE OF SECTION THREE OF THIS ACT, ISSUED TO REFINANCE THE
49 PROJECTS OF ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN SUBDIVI-
50 SION SIX-C OF SECTION THREE OF THIS ACT, SHALL BE SECURED BY (A) A MORT-
51 GAGE LIEN, (B) FUNDS AND ACCOUNTS ESTABLISHED UNDER THE BOND RESOLUTION,
52 (C) THE SECURED HOSPITAL SPECIAL DEBT SERVICE RESERVE FUND OR FUNDS, (D)
53 THE SECURED HOSPITAL CAPITAL RESERVE FUND OR FUNDS, AND (E) SUCH SERVICE
54 CONTRACT OR CONTRACTS ENTERED INTO IN ACCORDANCE WITH THE PROVISIONS OF
55 SUBDIVISION FOUR OF THIS SECTION.

1 2. (A) THE AGENCY SHALL ESTABLISH A SECURED HOSPITAL SPECIAL DEBT
2 SERVICE RESERVE FUND OR FUNDS AND PAY INTO SUCH FUND OR FUNDS MONEYS
3 FROM THE SECURED HOSPITAL FUND UP TO AN AMOUNT NOT TO EXCEED AN AMOUNT
4 NECESSARY TO ENSURE THE REPAYMENT OF PRINCIPAL AND INTEREST DUE ON ANY
5 OUTSTANDING INDEBTEDNESS ON SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED
6 IN PARAGRAPH (D-1) OF SUBDIVISION THREE OF SECTION THREE OF THIS ACT.

7 FUNDS DEPOSITED IN SUCH SECURED HOSPITAL SPECIAL DEBT SERVICE RESERVE
8 FUND OR FUNDS SHALL BE USED IN THE EVENT THAT AN ELIGIBLE SECURED HOSPI-
9 TAL BORROWER, AS DEFINED IN SUBDIVISION SIX-C OF SECTION THREE OF THIS
10 ACT, FAILS TO MAKE PAYMENTS IN AN AMOUNT SUFFICIENT TO PAY THE REQUIRED
11 DEBT SERVICE PAYMENTS ON SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN
12 PARAGRAPH (D-1) OF SUBDIVISION THREE OF SECTION THREE OF THIS ACT.

13 (B) THE AGENCY SHALL, FOR THE PURPOSES OF PARAGRAPH (A) OF THIS SUBDI-
14 VISION AND FOR THE SUPPORT OF ELIGIBLE SECURED HOSPITAL BORROWERS, PAY
15 INTO THE SECURED HOSPITAL FUND CURRENTLY ESTABLISHED AND MAINTAINED BY
16 THE AGENCY: (I) ALL FUNDS REQUIRED TO BE PAID IN ACCORDANCE WITH THE
17 PROVISIONS OF ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW AND REGU-
18 LATIONS PROMULGATED IN SUCH ARTICLE; (II) ANY MORTGAGE INSURANCE PREMIUM
19 ASSESSED IN AN AMOUNT FIXED AT THE DISCRETION OF THE AGENCY, UPON THE
20 ISSUANCE OF SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN PARAGRAPH
21 (D-1) OF SUBDIVISION THREE OF SECTION THREE OF THIS ACT; (III) ANY
22 INCOME OR INTEREST EARNED ON OTHER RESERVE FUNDS WHICH THE AGENCY ELECTS
23 TO TRANSFER TO THE SECURED HOSPITAL FUND; AND (IV) ANY OTHER MONEYS
24 WHICH MAY BE MADE AVAILABLE TO THE AGENCY FROM ANY OTHER SOURCE OR
25 SOURCES. MONEYS PAID INTO THE SECURED HOSPITAL FUND SHALL, IN THE
26 DISCRETION OF THE AGENCY, BUT SUBJECT TO AGREEMENTS WITH BONDHOLDERS, BE
27 USED TO FUND THE SPECIAL DEBT SERVICE RESERVE FUND OR FUNDS AT A LEVEL
28 OR LEVELS WHICH MINIMIZE THE NEED FOR USE OF THE CAPITAL RESERVE FUND OR
29 FUNDS IN THE EVENT OF THE FAILURE OF AN ELIGIBLE SECURED HOSPITAL
30 BORROWER, AS DEFINED IN SUBDIVISION SIX-C OF SECTION THREE OF THIS ACT,
31 TO MAKE THE REQUIRED DEBT SERVICE PAYMENTS ON SPECIAL HOSPITAL PROJECT
32 BONDS, AS DEFINED IN PARAGRAPH (D-1) OF SUBDIVISION THREE OF SECTION
33 THREE OF THIS ACT.

34 (C) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (A) AND (B) OF THIS
35 SUBDIVISION, THE STATE HEREBY EXPRESSLY RESERVES THE RIGHT TO MODIFY OR
36 REPEAL THE PROVISIONS OF ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW.

37 3. THE AGENCY SHALL ESTABLISH A SECURED HOSPITAL CAPITAL RESERVE FUND
38 OR FUNDS WHICH SHALL BE FUNDED AT AN AMOUNT OR AMOUNTS EQUAL TO THE
39 LESSER OF EITHER: (A) THE MAXIMUM AMOUNT OF PRINCIPAL, SINKING FUND
40 PAYMENTS AND INTEREST DUE IN ANY SUCCEEDING YEAR ON OUTSTANDING SPECIAL
41 HOSPITAL PROJECT BONDS, AS DEFINED IN PARAGRAPH (D-1) OF SUBDIVISION
42 THREE OF SECTION THREE OF THIS ACT, OR (B) THE MAXIMUM AMOUNT TO ENSURE
43 THAT SUCH BONDS WILL NOT BE CONSIDERED ARBITRAGE BONDS UNDER THE INTER-
44 NAL REVENUE CODE OF 1986, AS AMENDED. THE CAPITAL RESERVE FUND SHALL BE
45 FUNDED BY THE SALE OF SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN
46 PARAGRAPH (D-1) OF SUBDIVISION THREE OF SECTION THREE OF THIS ACT, OR
47 FROM SUCH OTHER FUNDS AS MAY BE LEGALLY AVAILABLE FOR SUCH PURPOSE, AS
48 PROVIDED FOR IN THE BOND RESOLUTION OR RESOLUTIONS AUTHORIZING THE ISSU-
49 ANCE OF SUCH BONDS.

50 4. (A) NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL OR SPECIAL LAW TO
51 THE CONTRARY, AND SUBJECT TO THE MAKING OF ANNUAL APPROPRIATIONS THERE-
52 FOR BY THE LEGISLATURE IN ORDER TO REFINANCE MORTGAGE LOANS OR MAKE
53 SUPPLEMENTAL MORTGAGE LOANS TO ELIGIBLE SECURED HOSPITAL BORROWERS, AS
54 DEFINED IN SUBDIVISION SIX-C OF SECTION THREE OF THIS ACT, THE DIRECTOR
55 OF THE BUDGET IS AUTHORIZED IN ANY STATE FISCAL YEAR TO ENTER INTO ONE
56 OR MORE SERVICE CONTRACTS, WHICH SERVICE CONTRACTS SHALL NOT EXCEED THE

1 TERM OF THE SPECIAL HOSPITAL PROJECT BONDS, ISSUED FOR THE BENEFIT OF
2 THE ELIGIBLE SECURED HOSPITAL BORROWER, UPON SUCH TERMS AS THE DIRECTOR
3 OF THE BUDGET AND THE AGENCY AGREE, SO AS TO PROVIDE ANNUALLY TO THE
4 AGENCY IN THE AGGREGATE SUCH SUM, IF ANY, AS NECESSARY TO MEET THE DEBT
5 SERVICE PAYMENTS DUE ON OUTSTANDING SPECIAL HOSPITAL PROJECT BONDS, AS
6 DEFINED IN PARAGRAPH (D-1) OF SUBDIVISION THREE OF SECTION THREE OF THIS
7 ACT, IN ANY YEAR IF THE FUNDS PROVIDED FOR IN THIS SECTION ARE INADE-
8 QUATE.

9 (B) ANY SERVICE CONTRACT ENTERED INTO PURSUANT TO PARAGRAPH (A) OF
10 THIS SUBDIVISION SHALL PROVIDE (I) THAT THE OBLIGATION OF THE DIRECTOR
11 OF THE BUDGET OR OF THE STATE TO FUND OR TO PAY THE AMOUNTS THEREIN
12 PROVIDED FOR SHALL NOT CONSTITUTE A DEBT OF THE STATE WITHIN THE MEANING
13 OF ANY CONSTITUTIONAL OR STATUTORY PROVISION AND SHALL BE DEEMED EXECU-
14 TORY ONLY TO THE EXTENT OF MONEYS AVAILABLE AND THAT NO LIABILITY SHALL
15 BE INCURRED BY THE STATE BEYOND THE MONEYS AVAILABLE FOR SUCH PURPOSE,
16 AND THAT SUCH OBLIGATION IS SUBJECT TO ANNUAL APPROPRIATION BY THE
17 LEGISLATURE; AND (II) THAT THE AMOUNTS PAID TO THE AGENCY PURSUANT TO
18 ANY SUCH CONTRACT MAY BE USED BY IT SOLELY TO PAY OR TO ASSIST IN
19 FINANCING COSTS OF MORTGAGE LOANS TO ELIGIBLE SECURED HOSPITAL BORROW-
20 ERS, AS DEFINED IN SUBDIVISION SIX-C OF SECTION THREE OF THIS ACT.

21 5. THE AGENCY SHALL NOT ISSUE SPECIAL HOSPITAL PROJECT BONDS, AS
22 DEFINED IN PARAGRAPH (D-1) OF SUBDIVISION THREE OF SECTION THREE OF THIS
23 ACT, EXCEPT TO REFINANCE MORTGAGE LOANS OR FINANCE SUPPLEMENTAL MORTGAGE
24 LOANS FOR ELIGIBLE SECURED HOSPITAL BORROWERS AS PROVIDED IN SECTION
25 THREE OF THIS ACT.

26 S 12. Notwithstanding any other provision of this act: (i) reimburse-
27 ment for interest on any indebtedness hereunder to be paid by the
28 medical assistance program established under title 11 of article 5 of
29 the social services law shall be subject to the availability of federal
30 financial participation; and (ii) the refinancing of a mortgage loan
31 pursuant to this act shall not alter, affect or change the component of
32 medical assistance reimbursement applicable to the depreciation of any
33 asset or assets.

34 S 13. The expiration and repeal of sections one through ten of this
35 act shall not affect or impair any bonds or notes issued, or any loan
36 made to any borrower, pursuant to the provisions of this act prior to
37 the expiration of these sections.

38 S 14. This act shall take effect immediately; provided that sections
39 one through ten of this act shall expire and be deemed repealed March
40 31, 2012; provided further, that the secured hospital fund established
41 by paragraph b of subdivision 2 of section 7-b of the New York state
42 medical care facilities finance agency act shall not be affected by such
43 repeal and shall continue in existence.