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

5562--B

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 -- 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; 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. Section 2872 of the public health law is amended by adding a new subdivision 3-b to read as follows:

3-B. "ELIGIBLE SECURED HOSPITAL BORROWER". A NOT-FOR-PROFIT HOSPITAL CORPORATION ORGANIZED UNDER THE LAWS OF THIS STATE, WHICH HAS FINANCED OR REFINANCED A PROJECT OR PROJECTS PURSUANT TO THE FORMER SECTION SEVEN-A OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE CONSTITUTING THE NEW YORK STATE MEDICAL CARE FACILITIES FINANCE AGENCY ACT, AND FOR WHICH SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN FORMER PARAGRAPH (D) OF SUBDIVISION THREE OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE, REMAIN OUTSTANDING AND SHALL ALSO INCLUDE, FOR THE PURPOSES OF MAKING SUPPLEMENTAL MORTGAGE LOANS AS DEFINED IN SUBDIVISION TWELVE-A OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE, BROOKDALE HOSPITAL MEDICAL CENTER AND JAMAICA HOSPITAL.

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

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S 2. Subdivision 4 of section 2872 of the public health law, as amended by chapter 389 of the laws of 1987, is amended to read as follows:

4. "Project". "Hospital project". A specific work or improvement, including lands, buildings, improvements, fixtures and articles of personal property, acquired, constructed, rehabilitated, owned and operated by an eligible borrower pursuant to this article, to provide hospital or other facilities for the prevention, diagnosis or treatment of human disease, pain, injury, disability, deformity or physical condition, and for facilities incidental or appurtenant thereto. "Project" and "Hospital project" shall also mean the refinancing of existing indebtedness which constitutes a lien or other encumbrance upon the real property or assets of the eligible borrower whether or not such refinancing is related to the construction, acquisition or rehabilitation of a specific work or improvement. The term "project" or "hospital project" as used in this subdivision shall also mean a separate work or improvement, including lands, buildings, fixtures and personal property related thereto owned and operated by an eligible borrower to provide such services, functions, capabilities and facilities as may be convenient or [deisrable] DESIRABLE for the operation of a hospital or other such facility. THE TERM "PROJECT" OR "HOSPITAL PROJECT", IN THE CASE OF A SUPPLEMENTAL MORTGAGE LOAN AS DEFINED IN SUBDIVISION TWELVE-A OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE, SHALL ALSO MEAN, IN AN AMOUNT UP TO EIGHTY MILLION DOLLARS, FOR ANY PURPOSE APPROVED BY THE COMMISSIONER PURSUANT TO SECTION TWENTY-EIGHT HUNDRED SEVENTY-FOUR-B OF THIS ARTICLE.

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

S 2874-B. REFINANCING MORTGAGE LOANS AND MAKING SUPPLEMENTAL MORTGAGE LOANS TO ELIGIBLE SECURED HOSPITAL BORROWERS. ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN SUBDIVISION THREE-B OF SECTION TWENTY-EIGHT HUNDRED SEVENTY-TWO OF THIS ARTICLE, SHALL BE AUTHORIZED TO REFINANCE ANY MORTGAGE LOAN FINANCED WITH THE PROCEEDS OF SPECIAL HOSPITAL PROJECT BONDS, WHICH LOANS ARE OUTSTANDING AS OF THE EFFECTIVE DATE OF THIS SECTION AND TO FINANCE SUPPLEMENTAL MORTGAGE LOANS, AS DEFINED IN SUBDIVISION TWELVE-A OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE. A MORTGAGE LOAN TO AN ELIGIBLE SECURED HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION THREE-B OF SECTION TWENTY-EIGHT HUNDRED SEVENTY-TWO OF THIS ARTICLE, OR SUPPLEMENTAL MORTGAGE LOAN, AS DEFINED IN SUBDIVISION TWELVE-A OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE, MADE BY THE MEDICAL CARE FACILITIES FINANCE AGENCY, AND ANY SUCCESSOR THERETO, MAY BE FINANCED OR REFINANCED FOR A TERM NOT LONGER THAN THE TERM APPROVED BY THE COMMISSIONER PURSUANT TO THIS SECTION OR IF THE BONDS ISSUED TO FINANCE SUCH MORTGAGE LOAN OR SUPPLEMENTAL MORTGAGE LOAN ARE ISSUED AS TAX-EXEMPT BONDS, SUCH SHORTER TERM AS IS NECESSARY TO ASSURE THAT THE INTEREST ON BONDS ISSUED TO FINANCE OR REFINANCE THE MORTGAGE LOAN WILL BE EXCLUDABLE FROM THE GROSS INCOME OF THE HOLDERS THEREOF FOR FEDERAL TAX PURPOSES, PROVIDED THAT IN NO EVENT SHALL THE TERM OF SUCH REFINANCING LOAN EXCEED THIRTY YEARS FROM THE DATE OF THE ISSUANCE OF THE REFUNDING BONDS AND SHALL INCLUDE ALL COSTS ASSOCIATED WITH THE FINANCING OR REFINANCING OF INDEBTEDNESS. ALL FINANCING OR REFINANCING APPLICATIONS BY ELIGIBLE SECURED HOSPITAL BORROWERS SHALL BE APPROVED BY THE ELIGIBLE SECURED HOSPITAL BORROWER'S BOARD AND THE COMMISSIONER. SUCH FINANCING OR REFINANCING APPLICATIONS SHALL INCLUDE ANALYTICAL EVIDENCE SUFFICIENT TO

DEMONSTRATE THAT THE PROPOSED FINANCING OR REFINANCING IS BEING UNDERTAKEN FOR SOUND BUSINESS PURPOSES AND IN FURTHERANCE OF MAINTAINING OR IMPROVING THE FINANCIAL CONDITION OF THE HOSPITAL. SUCH EVIDENCE MAY INCLUDE BUT IS NOT LIMITED TO: PRESENT VALUE ANALYSIS OF DEBT SERVICE PAYMENTS, INCLUDING WHERE APPLICABLE, PRESENT VALUE ANALYSIS THAT SEGREGATES DEBT SERVICE PAYMENTS BETWEEN PRINCIPAL AND INTEREST COMPONENTS; FINANCIAL PRO FORMAS THAT PROJECT THE BORROWER'S REVENUES, EXPENSES AND FINANCIAL POSITION FOR A PERIOD DETERMINED BY THE COMMISSIONER; OR ANY OTHER ANALYSIS OR INFORMATION THE COMMISSIONER DEEMS NECESSARY TO EVALUATE THE APPLICATION AND TO ASSESS THE FINANCIAL ABILITY OF THE ELIGIBLE SECURED HOSPITAL BORROWER TO REPAY THE MORTGAGE LOAN OR SUPPLEMENTAL MORTGAGE LOAN ACCORDING TO ITS TERMS. AS A CONDITION OF SUCH PRIOR APPROVAL, THE COMMISSIONER SHALL APPROVE THE PRINCIPAL AMOUNT OF THE FINANCING OR REFINANCING LOAN IN THE AMOUNT PROVIDED IN SECTION TWELVE-A OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE, AS AMENDED, PROVIDED THAT SUCH AMOUNT MAY BE REDUCED ONLY TO THE EXTENT THAT GRANT FUNDING IS MADE AVAILABLE TO THE ELIGIBLE SECURED HOSPITAL BORROWERS THROUGH HEAL NY OR OTHER PROGRAMS TO FINANCE EMERGENCY ROOM OR OTHER MAJOR CAPITAL PROJECTS OR OTHER USES PERMITTED UNDER THIS SECTION, AS PROPOSED BY THE ELIGIBLE HOSPITAL BORROWER, AND THE MAXIMUM TERM THEREOF, AND SHALL REQUIRE THE ELIGIBLE SECURED HOSPITAL BORROWER TO GIVE THE DEPARTMENT A WRITTEN UNDERTAKING, ACCEPTABLE TO THE COMMISSIONER, THAT IT WILL NOT CLAIM ADDITIONAL REIMBURSEMENT UNDER THE MEDICAL ASSISTANCE PROGRAM AS ESTABLISHED UNDER TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW DUE TO INTEREST PAYMENTS ON REFINANCING INDEBTEDNESS. ANY SUCH ADDITIONAL INTEREST PAYMENTS ON REFINANCED INDEBTEDNESS COVERED BY SUCH WRITTEN UNDERTAKING SHALL NOT BE CONSIDERED AS ALLOWABLE COSTS UNDER THE MEDICAL ASSISTANCE PROGRAM AND SHALL NOT BE INCLUDED IN REIMBURSEMENT RATES OF PAYMENT UNDER ARTICLE TWENTY-EIGHT OF THIS CHAPTER. THE FOREGOING SHALL NOT PRECLUDE THE REIMBURSEMENT OF CAPITAL COSTS ATTRIBUTABLE TO A PROJECT FINANCED BY MEANS OF A SUPPLEMENTAL MORTGAGE LOAN, AS DEFINED IN SUBDIVISION TWELVE-A OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE, WHICH SHALL BE REIMBURSED IN A MANNER CONSISTENT WITH THE REIMBURSEMENT OF OTHER CAPITAL COSTS.

S 4. Subdivision 3 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 by adding a new paragraph (d-1) to read as follows:

(D-1) "SPECIAL HOSPITAL PROJECT BONDS" SHALL MEAN TAXABLE OR TAX-EXEMPT BONDS ISSUED PURSUANT TO SECTION SEVEN-C OF THIS ACT FOR THE PURPOSE OF REFINANCING OUTSTANDING MORTGAGE LOANS OR FINANCING SUPPLEMENTAL MORTGAGE LOANS OF ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN SUBDIVISION SIX-C OF THIS SECTION, PURSUANT TO THIS ACT.

S 5. 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 by adding a new subdivision 6-c to read as follows:

6-C. "ELIGIBLE SECURED HOSPITAL BORROWER" SHALL MEAN A NOT-FOR-PROFIT HOSPITAL CORPORATION ORGANIZED UNDER THE LAWS OF THIS STATE, WHICH HAS 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 essential for the rendition of required hospital services as such term is defined in article twenty-eight of the public health law, and (b) the agency consents to such exclusion.

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

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

S 9. 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 by adding a new subdivision 12-a to read as follows:

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

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

10-D. TO MAKE MORTGAGE LOANS, SUPPLEMENTAL MORTGAGE LOANS AND PROJECT LOANS TO NON-PROFIT HOSPITAL CORPORATIONS AND NON-PROFIT MEDICAL CORPORATIONS CONSTITUTING ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN SUBDIVISION SIX-C OF SECTION THREE OF THIS ACT, AND TO UNDERTAKE COMMITMENTS TO MAKE ANY SUCH MORTGAGE LOANS, SUPPLEMENTAL MORTGAGE LOANS AND PROJECT LOANS;

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

S 7-C. SECURED HOSPITAL PROJECTS RESERVE FUNDS AND APPROPRIATIONS. 1. SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN PARAGRAPH (D-1) OF SUBDIVISION THREE OF SECTION THREE OF THIS ACT, ISSUED TO REFINANCE THE PROJECTS OF ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN SUBDIVISION SIX-C OF SECTION THREE OF THIS ACT, SHALL BE SECURED BY (A) A MORTGAGE LIEN, (B) FUNDS AND ACCOUNTS ESTABLISHED UNDER THE BOND RESOLUTION, (C) THE SECURED HOSPITAL SPECIAL DEBT SERVICE RESERVE FUND OR FUNDS, (D) THE SECURED HOSPITAL CAPITAL RESERVE FUND OR FUNDS, AND (E) SUCH SERVICE CONTRACT OR CONTRACTS ENTERED INTO IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION.

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

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

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

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

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

4. (A) NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL OR SPECIAL LAW TO THE CONTRARY, AND SUBJECT TO THE MAKING OF ANNUAL APPROPRIATIONS THEREFOR BY THE LEGISLATURE IN ORDER TO REFINANCE MORTGAGE LOANS OR MAKE SUPPLEMENTAL MORTGAGE LOANS TO ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN SUBDIVISION SIX-C OF SECTION THREE OF THIS ACT, THE DIRECTOR OF THE BUDGET IS AUTHORIZED IN ANY STATE FISCAL YEAR TO ENTER INTO ONE OR MORE SERVICE CONTRACTS, WHICH SERVICE CONTRACTS SHALL NOT EXCEED THE TERM OF THE SPECIAL HOSPITAL PROJECT BONDS, ISSUED FOR THE BENEFIT OF THE ELIGIBLE SECURED HOSPITAL BORROWER, UPON SUCH TERMS AS THE DIRECTOR OF THE BUDGET AND THE AGENCY AGREE, SO AS TO PROVIDE ANNUALLY TO THE AGENCY IN THE AGGREGATE SUCH SUM, IF ANY, AS NECESSARY TO MEET THE DEBT SERVICE PAYMENTS DUE ON OUTSTANDING SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN PARAGRAPH (D-1) OF SUBDIVISION THREE OF SECTION THREE OF THIS

ACT, IN ANY YEAR IF THE FUNDS PROVIDED FOR IN THIS SECTION ARE INADEQUATE.

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

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

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

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

S 14. This act shall take effect immediately; provided that sections one through ten of this act shall expire and be deemed repealed November 30, 2010; provided further, that the secured hospital fund established by paragraph b of subdivision 2 of section 7-b of the New York state medical care facilities finance agency act shall not be affected by such repeal and shall continue in existence.