

11558

I N A S S E M B L Y

June 24, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Skartados, Brennan) -- (at request of the Governor) -- read once and referred to the Committee on Cities

AN ACT to authorize the city of Newburgh, in the county of Orange, to issue bonds for the purpose of liquidating certain deficits and imposing standards and requirements as to budgetary operations and fiscal management designed to restore such city to fiscal integrity; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "city of Newburgh fiscal recovery act".
3 S 2. Legislative findings. The legislature hereby finds and declares
4 that the fiscal condition of the city of Newburgh has severely deterio-
5 rated in recent years as a result of serious local economic and demo-
6 graphic challenges, the city's inability to ensure proper financial
7 accounting procedures, improvident budgeting and taxing practices, and
8 significant turnover in positions responsible for the management of city
9 finances. These factors have led to a substantial structural imbalance
10 between revenues and expenditures, with a projected cumulative deficit
11 of approximately one-quarter of the city's budgeted revenues. The abil-
12 ity of the city to regain fiscal stability is impaired by a recent
13 decline in the city's tax base and continuing weakness in the local
14 economy. These circumstances have caused an independent bond rating
15 service to lower the city's bond rating below investment grade, thereby
16 making the city's ability to access the credit market uncertain.
17 It is hereby found and declared that the city of Newburgh is in a
18 state of fiscal crisis, and that a combination of enhanced budgetary
19 discipline and short-term budgetary relief is necessary to assist the
20 city in returning to fiscal and economic stability, while ensuring
21 adequate funding for the provision of essential services.
22 It is hereby acknowledged that a home rule message recommended by the
23 city manager of the city of Newburgh, approved by the city council and
24 endorsed by the mayor of the city, requests the enactment of all of the

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

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provisions of this act as necessary and in the public interest to accomplish the objective of improving market reception for the necessary sale of bonds and other obligations of the city by establishing standards and requirements as to budgetary operations and fiscal management to restore the city to fiscal integrity while retaining the city's right to operate independently as a municipal corporation of the state of New York.

S 3. Exclusivity of act. Based upon the foregoing findings, the legislature through this act hereby imposes on the city certain requirements as to budgetary operations and fiscal management, including the elimination of accumulated deficits of the city, and hereby declares that to the extent the provisions of this act are inconsistent with any general, special or local law, this act shall apply.

S 4. Definitions. As used in this act, the following words and terms shall have the following meanings respectively, unless the text shall indicate another or different meaning or intent:

(a) "Budget" means a current operating budget of the city prepared or adopted pursuant to general, special or local law, being the annual budget and estimate of expenditures to be made during a fiscal year for the general support and current expenses of the government of the city to be paid from taxes or assessments or other current revenues of the city for such year.

(b) "City" means the city of Newburgh, in the county of Orange.

(c) "City comptroller" means the comptroller of the city.

(d) "City council" means the city council of the city.

(e) "City manager" means the city manager of the city.

(f) "City taxes" means and includes all taxes on real property levied and assessed by the city, based on valuation thereof and shall not mean any rent, rate, fee, special assessment or other charge based on benefit or use.

(g) "Collecting officer" means the officer empowered to collect and receive city taxes.

(h) "Deficit bonds" means the bonds authorized to be issued by section five of this act.

(i) "Deficit notes" means bond anticipation notes issued in anticipation of the issuance of deficit bonds.

(j) "Financial plan" means the three-year financial plan required by section eleven of this act.

(k) "Fiscal year" means the fiscal year of the city.

(l) "Mayor" means the mayor of the city.

(m) "Outstanding", when used with respect to obligations of the city as of any particular date, means all obligations of the city theretofore issued and thereupon being issued except any obligation theretofore paid and discharged or for the payment of the principal of and interest on which money is held by or on behalf of the city, in trust solely and in all events only for the purpose and sufficient to pay in full the principal and redemption premium, if any, of and interest on such obligations.

(n) "Special debt service" means, with respect to a fiscal year, the amounts required for the timely payment of (i) all principal due or becoming due and payable in said year with respect to any serial bonds, tax anticipation notes, capital notes or budget notes of the city, and all principal amortization for said year required by law with respect to bond anticipation notes or other securities of the city, and not specifically mentioned in paragraph (ii) of this subdivision, (ii) all interest due or becoming due and payable in said year with respect to any serial bonds, bond anticipation notes, tax anticipation notes, revenue

1 anticipation notes, capital notes, budget notes or other securities of
2 the city not specifically mentioned herein, and (iii) all sinking fund
3 contributions required in said year with respect to any sinking fund
4 bonds.

5 (o) "Special debt service fund" means the fund which is held by the
6 state comptroller and is described and provided for in section fifteen
7 of this act.

8 (p) "State aid" means all aid and incentives for municipalities pursu-
9 ant to section 54 of the state finance law, any successor type of aid
10 and any new aid appropriated by the state as local government assistance
11 for the benefit of the city.

12 (q) "State comptroller" means the comptroller of the state, pursuant
13 to his or her authority to supervise the accounts of any political
14 subdivision of the state.

15 Unless the context specifically provides otherwise, any terms used in
16 this act such as revenues, expenditures or expenses shall be construed
17 as such term is construed under applicable accounting principles incor-
18 porated in the uniform system of accounts prescribed by the state comp-
19 troller.

20 S 5. Deficit bond and deficit note issuance authorization. The city is
21 hereby authorized to issue bonds, subject to the provisions of this act,
22 on or before December 31, 2011, in an aggregate principal amount not to
23 exceed fifteen million dollars (\$15,000,000) (exclusive of the costs and
24 expenses incidental to the issuance of the bonds authorized to be issued
25 by this section) for the specific object or purpose of liquidating actu-
26 al deficits in its general fund, the special revenue fund, and the capi-
27 tal projects fund existing at the close of its 2010 fiscal year. In
28 anticipation of the issuance of such bonds, deficit notes are hereby
29 authorized to be issued.

30 S 6. Period of probable usefulness established. It is hereby deter-
31 mined that the financing of the deficits described in section five of
32 this act is an object or purpose of the city for which indebtedness may
33 be incurred, the period of probable usefulness of which is hereby deter-
34 mined to be fifteen years, computed from the date of such deficit bonds
35 or from the date of the first deficit notes, whichever date is earlier.
36 Such deficit bonds and deficit notes shall be general obligations of the
37 city, to which the faith and credit of the city is pledged, and the city
38 shall make an annual appropriation sufficient to pay the principal of
39 and interest on such obligations as the same shall become due.

40 S 7. Certification of deficit. No deficit bonds may be issued unless
41 and until the state comptroller shall first review and confirm the
42 existence of the deficits described in section five of this act, as well
43 as certify the amount of the deficits. As soon as practicable after the
44 effective date of this act, but in no event prior to the close of the
45 city's 2010 fiscal year, the city shall prepare a report detailing the
46 amount and cause of the deficit and submit to the state comptroller such
47 report, together with the independent audit report for its last
48 completed fiscal year and such other information as the state comp-
49 troller may deem necessary. Within thirty days after receiving all
50 necessary reports and information, the state comptroller shall:

51 (a) perform such reviews as may be necessary;

52 (b) confirm the existence and certify the amount of the deficits; and

53 (c) provide notification to the city manager, the city comptroller,
54 the mayor and the city council as to the existence and amount of any
55 such deficits.

1 S 8. Limit on amount of deficit bonds. Deficit bonds may not be issued
2 in an amount exceeding the amount of such deficits as certified by the
3 state comptroller. If the city issues deficit notes prior to a determi-
4 nation by the state comptroller pursuant to section seven of this act in
5 an amount in excess of the amount of such deficits as confirmed by the
6 state comptroller, the city shall, from funds other than proceeds of
7 bonds or bond anticipation notes, either redeem such deficit notes in
8 the amount by which the amount of such deficit notes exceeds the amount
9 of such deficits as confirmed by the state comptroller or deposit a sum
10 equal to the amount by which such deficit notes exceed the amount of
11 such deficits as confirmed by the state comptroller into the special
12 debt service fund.

13 S 9. Quarterly budget reports and trial balances. For each fiscal year
14 during the effective period of this act, the city comptroller shall
15 monitor budgets of the city and, for each budget, prepare a quarterly
16 report of summarized budget data depicting overall trends of actual
17 revenues and budget expenditures for the entire budget rather than indi-
18 vidual line items. Such reports shall compare revenue estimates and
19 appropriations as set forth in such budget with the actual revenues and
20 expenditures made to date. All quarterly reports shall be accompanied by
21 a recommendation by the city manager setting forth any remedial action
22 necessary to resolve any unfavorable budget variance including the over-
23 estimation of revenues and the underestimation of appropriations, and
24 shall be completed within thirty days of the end of each quarter. The
25 city comptroller shall also prepare, as part of such report, a quarterly
26 trial balance of general ledger accounts. The above quarterly budgetary
27 reports and quarterly trial balances shall be prepared in accordance
28 with applicable accounting principles incorporated in the uniform system
29 of accounts prescribed by the state comptroller. These reports shall be
30 submitted to the city manager, the mayor, the city council, the state
31 director of the budget, the state comptroller, the chair of the assembly
32 ways and means committee, and the chair of the senate finance committee.

33 S 10. Budget review by state comptroller. During the effective period
34 of this act, the city manager shall submit the proposed budget for the
35 next succeeding fiscal year to the state comptroller no later than thir-
36 ty days before the date scheduled for the city council's vote on the
37 adoption of the final budget or the last date on which the budget may be
38 finally adopted, whichever is sooner. The state comptroller shall exam-
39 ine such proposed budget and make such recommendations as deemed appro-
40 priate thereon to the city prior to the adoption of the budget, but no
41 later than ten days before the date scheduled for the city council's
42 vote on the adoption of the final budget or the last date on which the
43 budget must be adopted, whichever is sooner. Such recommendations shall
44 be made after examination into the estimates of revenues and expendi-
45 tures of the city. The city council, no later than five days prior to
46 the adoption of the budget, shall review any such recommendations and
47 make adjustments to the proposed budget consistent with any recommenda-
48 tions made by the state comptroller.

49 S 11. Multiyear financial plans. During the effective period of this
50 act, the city manager shall prepare, along with the proposed budget for
51 the next succeeding fiscal year, a three-year financial plan covering
52 the next succeeding fiscal year and the two fiscal years thereafter. The
53 financial plan shall, at a minimum, contain projected employment levels,
54 projected annual expenditures for personal service, fringe benefits,
55 non-personal services and debt service; appropriate reserve fund
56 amounts; estimated annual revenues including projection of property tax

1 rates, the value of the taxable real property and resulting tax levy,
2 annual growth in sales tax and non-property tax revenues; and the
3 proposed use of one-time revenue sources. The financial plan shall also
4 identify actions necessary to achieve and maintain long-term fiscal
5 stability, including, but not limited to, improved management practices,
6 initiatives to minimize or reduce operating expenses, and potential
7 shared services agreements with other municipalities. Within thirty days
8 following the adoption by the city council of the budget for the next
9 succeeding fiscal year and upon the completion of each quarterly budget
10 report pursuant to section nine of this act, the city manager shall
11 update the financial plan consistent with such adopted budget or such
12 quarterly budget report. Copies of the financial plan and any update
13 shall be provided to the city comptroller, the mayor, the city council,
14 the state director of the budget, the state comptroller, the chair of
15 the assembly ways and means committee, and the chair of the senate
16 finance committee.

17 S 12. State comptroller to comment on further debt issuance. During
18 the effective period of this act, the city comptroller shall notify the
19 state comptroller at least fifteen days prior to the issuance of any
20 bonds or notes or entering into any installment purchase contract, and
21 the state comptroller may review and make recommendations regarding the
22 affordability to the city of any such proposed issuance or contract.

23 S 13. Private sale of bonds authorized. To facilitate the marketing of
24 (a) deficit bonds, (b) any bonds issued to refund such deficit bonds,
25 and (c) any other bonds to be issued on or before December 31, 2012, the
26 city may, notwithstanding any limitation on the private sales of bonds
27 provided by law and subject to the approval of the state comptroller of
28 the terms and conditions of such sales:

29 (1) arrange for the underwriting of such bonds at private sale through
30 negotiated fees or by sale of such bonds to an underwriter; or

31 (2) arrange for the private sale of such bonds through negotiated
32 agreement, with compensation for such sales to be provided by negotiated
33 agreement and/or negotiated fee, if required.

34 The cost of such underwriting or private placement shall be deemed to
35 be a preliminary cost for purposes of section 11.00 of the local finance
36 law.

37 S 14. Exceptions to the local finance law. Except as provided in this
38 act, all proceedings in connection with the issuance of such deficit
39 bonds or deficit notes shall be had and taken in accordance with the
40 provisions of the local finance law, provided, however, that any resolu-
41 tion or resolutions authorizing the issuance of such bonds or bond
42 anticipation notes shall not be subject to (a) any mandatory or permis-
43 sive referendum, (b) the provisions of section 107.00 of the local
44 finance law with respect to any requirements for a down payment and (c)
45 the provisions of section 10.10 of the local finance law.

46 S 15. Special debt service fund. (a) Upon the issuance of any deficit
47 bonds or deficit notes, the city council shall establish and thereafter
48 maintain a special debt service fund with the state comptroller for the
49 purpose of paying the special debt service due or becoming due in subse-
50 quent fiscal years. Such special debt service fund shall be discontinued
51 upon the expiration of the effectiveness of this act, and any balance
52 remaining in the special debt service fund at that time shall be paid by
53 the state comptroller to the city comptroller for use by the city in the
54 manner provided by law.

55 (b) The state comptroller shall deposit and pay into the special debt
56 service fund any portion of state aid as the state comptroller deter-

1 mines necessary to ensure sufficient moneys are available to make sched-
2 uled special debt service payments from the special debt service fund
3 over the succeeding twelve month period taking account of the city's
4 receipt of city taxes and state aid during such twelve month period and
5 the availability of other amounts appropriated or set aside by the city
6 to make such payments. Thereafter, the state comptroller shall, as soon
7 as practicable, pay over the remainder of any such state aid to the city
8 comptroller for use by the city in the manner provided by law.

9 (c) Not later than the first day of each fiscal year beginning after
10 issuance of any deficit bonds or deficit notes, the city comptroller
11 shall certify to the state comptroller the percentage obtained by divid-
12 ing the balance obtained by subtracting the amount of the appropriation
13 for such year for a reserve for uncollected taxes from the total amount
14 of city taxes levied and assessed for such year, into the total appro-
15 priation in the budget of such year for special debt service, and the
16 percentage so certified shall constitute the debt service percentage for
17 such fiscal year. Immediately upon receipt of any payment during such
18 fiscal year of or on account of any city taxes, the city, its collecting
19 officer and any agent receiving the same shall remit such payment to the
20 state comptroller. Of each sum so received, the state comptroller shall
21 deposit and pay into the special debt service fund the portion thereof
22 equal to the debt service percentage of the total sum, and shall deposit
23 and pay into the fund such additional amounts as the state comptroller
24 determines necessary to ensure sufficient moneys are available to make
25 scheduled special debt service payments from the special debt service
26 fund over the succeeding twelve month period taking account of the
27 timing of the city's receipt of city taxes and state aid during such
28 twelve month period and the availability of other amounts appropriated
29 or set aside by the city to make such payments. Thereafter, the state
30 comptroller shall, as soon as practicable, pay over the remainder of
31 such sum to the city comptroller for use by the city in the manner
32 provided by law.

33 (d) The moneys in the special debt service fund shall be invested in
34 the manner provided by section 11 of the general municipal law,
35 provided, however, that the investments shall be made for and on behalf
36 of the city by the state comptroller upon instructions from the chief
37 fiscal officer of the city which shall be consistent with the city's
38 investment policy adopted pursuant to section 39 of the general municip-
39 al law.

40 (e) The state comptroller shall from time to time during each fiscal
41 year withdraw from the special debt service fund all amounts required
42 for the payment as the same becomes due of all special debt service of
43 such fiscal year and cause the amounts so withdrawn to be applied to
44 such payments as and when due.

45 (f) The special debt service fund and all monies or securities therein
46 or payable thereto in accordance with this section is hereby declared to
47 be city property devoted to essential governmental purposes and accord-
48 ingly, shall not be applied to any purpose other than as provided herein
49 and shall not be subject to any order, judgment, lien, execution,
50 attachment, setoff or counterclaim by any creditor of the city other
51 than a creditor for whose benefit such fund is established and main-
52 tained and entitled thereto under and pursuant to this act.

53 S 16. Agreement with the state. (a) The state does hereby pledge to
54 and agree with the holders of any bonds, notes or other obligations
55 issued by the city during the effective period of this act and secured
56 by such a pledge that the state will not limit, alter or impair the

1 rights hereby vested in the city to fulfill the terms of any agreements
2 made with such holders pursuant to this act, or in any way impair the
3 rights and remedies of such holders or the security for such bonds,
4 notes or other obligations until such bonds, notes or other obligations
5 together with the interest thereon and all costs and expenses in
6 connection with any action or proceeding by or on behalf of such hold-
7 ers, are fully paid and discharged. The city is authorized to include
8 this pledge and agreement of the state in any agreement with the holders
9 of such bonds, notes or other obligations. Nothing contained in this act
10 shall be deemed to (i) obligate the state to make any payments or impose
11 any taxes to satisfy the debt service obligations of the city, (ii)
12 restrict any right of the state to amend, modify, repeal or otherwise
13 alter (A) section 54 of the state finance law or any other provision
14 relating to state aid, or (B) statutes imposing or relating to taxes or
15 fees, or appropriations relating thereto, or (iii) create a debt of the
16 state within the meaning of any constitutional or statutory provisions.
17 The city shall not include in any resolution, contract or agreement with
18 holders of such bonds, notes or other obligations any provision which
19 provides that an event of default occurs as a result of the state exer-
20 cising its rights described in paragraph (ii) of this subdivision.

21 (b) Any provision with respect to state aid shall be deemed executory
22 only to the extent of moneys available, and no liability shall be
23 incurred by the state beyond the moneys available for that purpose, and
24 any such payment by the state comptroller of state aid shall be subject
25 to annual appropriation of state aid by the state legislature.

26 S 17. Rights of the state comptroller and bondholders. (a) In the
27 event that the city shall fail to comply with any provision of this act,
28 and such non-compliance shall continue for a period of 30 days, (1) the
29 state comptroller acting alone, or (2) a duly appointed representative
30 of the holders of at least 25 per centum in aggregate principal amount
31 of (i) any series of deficit bonds or deficit notes, (ii) any series of
32 bonds issued to refund such deficit bonds or deficit notes, or (iii) any
33 other series of notes or bonds issued by the city during the effective
34 period of this act, by instrument or instruments filed in the office of
35 the clerk of Orange county and proved or acknowledged in the same manner
36 as a deed to be recorded, may bring an action or commence a proceeding
37 in accordance with the civil practice law and rules to (A) require the
38 city to carry out any of its obligations under this act or (B) enjoin
39 any acts or things which may be unlawful or in violation of the obli-
40 gations imposed on the city under this act. In addition, the duly
41 appointed representative of the bondholders of any such series of notes
42 or bonds may bring an action or commence a proceeding in accordance with
43 the civil practice law and rules to enforce the rights of the holders of
44 such series of notes or bonds.

45 (b) The supreme court in the county of Orange shall have jurisdiction
46 of any action or proceeding by the state comptroller or the represen-
47 tative of such bondholders.

48 S 18. Severability clause. If any clause, sentence, paragraph, section
49 or part of this title shall be adjudged by any court of competent juris-
50 diction to be invalid, such judgment shall not affect, impair or invali-
51 date the remainder thereof, but shall be confined in its operation to
52 the clause, sentence, paragraph, section or part involved in the contro-
53 versy in which such judgment shall have been rendered. The provisions of
54 this act shall be liberally construed to assist the effectuation of the
55 public purposes furthered hereby.

1 S 19. This act shall take effect immediately; and shall remain in full
2 force and effect until the fifteenth anniversary of the date of first
3 issuance of deficit bonds or deficit notes pursuant to this act, when
4 upon such date the provisions of this act shall be deemed repealed; and
5 provided, however, that the state comptroller shall notify the legisla-
6 tive bill drafting commission upon the occurrence of this act in order
7 that the commission may maintain an accurate and timely effective data
8 base of the official text of the laws of the state of New York in furth-
9 erance of effectuating the provisions of section 44 of the legislative
10 law and section 70-b of the public officers law.