

2218

2009-2010 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. CLARK, JOHN, V. LOPEZ -- Multi-Sponsored by -- M. of A. ABBATE, ALFANO, BARRA, BRENNAN, GALEF, GREENE, HOOPER, JACOBS, TOWNS, WEINSTEIN -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to the construction and financing of facilities by the dormitory authority for day care providers

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

1 Section 1. Paragraph (b) of subdivision 2 of section 1676 of the
2 public authorities law is amended by adding a new undesignated paragraph
3 to read as follows:
4 DAY CARE PROVIDERS.
5 S 2. Subdivision 1 of section 1680 of the public authorities law is
6 amended by adding a new undesignated paragraph to read as follows:
7 DAY CARE PROVIDERS.
8 S 3. Section 1676 of the public authorities law is amended by adding a
9 new subdivision 46 to read as follows:
10 46. (A) THE TERM "DAY CARE PROVIDER" OR "PROVIDER" SHALL MEAN A CORPO-
11 RATION LICENSED TO OPERATE A CHILD CARE CENTER AS DEFINED IN SECTION
12 THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW PROVIDING CARE AND MAIN-
13 TENANCE PURSUANT TO ARTICLE SIX OF THE SOCIAL SERVICES LAW.
14 (B) THE TERM "FACILITY" SHALL MEAN A CHILD CARE CENTER AS DEFINED IN
15 SECTION THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW.
16 S 4. Section 1680 of the public authorities law is amended by adding a
17 new subdivision 41 to read as follows:
18 41. A. THE DORMITORY AUTHORITY MAY ENTER INTO LEASES, SUBLEASES, OR
19 OTHER AGREEMENTS WITH DAY CARE PROVIDERS FOR THE FINANCING OF AND THE
20 DESIGN, CONSTRUCTION, RECONSTRUCTION, REHABILITATION, IMPROVEMENT, RENO-
21 VATION, ACQUISITION OR OTHERWISE PROVIDING FOR, FURNISHING OR EQUIPPING
22 OF FACILITIES WHERE THE TOTAL ESTIMATED COST OF SUCH FACILITIES EXCEEDS

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

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1 TEN THOUSAND DOLLARS. THE PLANS AND SPECIFICATIONS OF SUCH FACILITIES,
2 AND THE TOTAL PROJECT COST THEREOF, SHALL BE SUBJECT TO THE APPROVAL OF
3 THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES. SUCH
4 FACILITIES MAY BE CONSTRUCTED ONLY ON PROPERTY OWNED BY SUCH DAY CARE
5 PROVIDER OR, IF THE PROPERTY IS LEASED, WHERE THE LEASE IS FOR A PERIOD
6 AT LEAST EQUAL TO THE APPROPRIATE PERIOD OF PROBABLE USEFULNESS FOR SUCH
7 FACILITIES AS LISTED IN SECTION 11.00 OF THE LOCAL FINANCE LAW, OR TWO
8 TIMES THE LENGTH OF THE LEASE, SUBLEASE OR OTHER AGREEMENT WITH THE
9 DORMITORY AUTHORITY, WHICHEVER IS LONGER.

10 B. EACH SUCH PROVIDER SHALL, NOTWITHSTANDING ANY OTHER PROVISION OF
11 LAW, HAVE THE POWER TO CONVEY, LEASE, SUBLEASE OR OTHERWISE MAKE AVAIL-
12 ABLE TO THE DORMITORY AUTHORITY WITHOUT CONSIDERATION, TITLE OR ANY
13 OTHER RIGHTS IN REAL PROPERTY SATISFACTORY TO THE DORMITORY AUTHORITY.

14 C. IN ADDITION TO PROVIDING FOR ALL OTHER MATTERS DEEMED NECESSARY AND
15 PROPER, SUCH LEASES, SUBLEASES AND OTHER AGREEMENTS SHALL (1) REQUIRE
16 SUCH PROVIDER TO PAY TO THE DORMITORY AUTHORITY ANNUAL RENTALS WHICH
17 SHALL INCLUDE THE AMOUNT REQUIRED TO PAY THE PRINCIPAL OF AND INTEREST
18 ON OBLIGATIONS OF THE DORMITORY AUTHORITY ISSUED IN RELATION TO PROVID-
19 ING SUCH FACILITIES AND ALL INCIDENTAL EXPENSES OF THE DORMITORY AUTHOR-
20 ITY INCURRED IN RELATION THERETO, (2) REQUIRE THE PROVIDER TO INCLUDE AN
21 AMOUNT SUFFICIENT TO MEET ITS OBLIGATIONS UNDER THE LEASE, SUBLEASE OR
22 OTHER AGREEMENT IN EACH PROPOSED BUDGET SUBMITTED DURING THE TERM OF THE
23 LEASE, SUBLEASE OR OTHER AGREEMENT, AND (3) NOT BE EXECUTED UNTIL SUCH
24 FACILITIES ARE APPROVED BY THE COMMISSIONER OF THE OFFICE OF CHILDREN
25 AND FAMILY SERVICES.

26 D. TITLE OR OTHER REAL PROPERTY RIGHTS TO THE FACILITIES FINANCED
27 PURSUANT TO THIS SUBDIVISION SHALL REMAIN WITH THE DORMITORY AUTHORITY
28 UNTIL THE DORMITORY AUTHORITY CERTIFIES TO THE COMMISSIONER OF THE
29 OFFICE OF CHILDREN AND FAMILY SERVICES AND THE COMPTROLLER THE RECEIPT
30 BY IT OF THE AMOUNT NECESSARY TO PAY THE TOTAL AGGREGATE AMOUNT OF ANNU-
31 AL RENTALS TO THE DORMITORY AUTHORITY. AT SUCH TIME, TITLE OR OTHER REAL
32 PROPERTY RIGHTS THERETO SHALL BE TRANSFERRED BY THE DORMITORY AUTHORITY
33 TO SUCH PROVIDER. IN ORDER TO AVAIL ITSELF OF THE PROVISIONS OF THIS
34 SUBDIVISION, EACH SUCH PROVIDER MUST ALSO AGREE TO CONTINUE TO OPERATE
35 A FACILITY AND SHALL BE REQUIRED TO ALLOCATE TWENTY-FIVE PERCENT OR MORE
36 OF ITS CAPACITY PURSUANT TO CONTRACTS WITH SOCIAL SERVICES DISTRICTS.
37 SUCH LEASE, SUBLEASE OR OTHER AGREEMENT WITH THE DORMITORY AUTHORITY
38 SHALL PROVIDE THAT, IF THE PROVIDER SHALL CEASE TO OPERATE SUCH A
39 PROGRAM AT ANY TIME DURING THE TERM OF THE AGREEMENT: (I) THE STATE
40 WILL HAVE THE OPTION TO TAKE SUCH TITLE OR OTHER REAL PROPERTY RIGHTS OF
41 THE DORMITORY AUTHORITY IN LAND, BUILDINGS, EQUIPMENT AND OTHER PROPER-
42 TIES WHICH THE PROVIDER USES FOR ITS PROGRAM UPON, SUBJECT TO APPROPRI-
43 ATIONS, PAYMENT BY THE STATE TO THE DORMITORY AUTHORITY OF THE AMOUNT
44 REQUIRED TO PAY THE TOTAL AGGREGATE AMOUNT OF ANNUAL RENTALS TO THE
45 DORMITORY AUTHORITY; OR (II) THE PROVIDER SHALL PAY TO THE DORMITORY
46 AUTHORITY ONE HUNDRED PERCENT OF THE OUTSTANDING PRINCIPAL AND INTEREST
47 AND IN ADDITION TO SUCH BALANCE SHALL ALSO PAY THE AMOUNT EQUAL TO THE
48 DIFFERENCE BETWEEN THE INTEREST DUE AND THE INTEREST THAT WOULD HAVE
49 BEEN DUE HAD THE RATE OF INTEREST CHARGED BEEN AT THE COMMERCIAL LENDING
50 RATE OVER THE SAME PERIOD.

51 E. METHOD OF PAYMENT; RESERVE FUND. (1) ANY DAY CARE PROVIDER WHICH
52 ELECTS TO AVAIL ITSELF OF THE PROVISIONS OF THIS SUBDIVISION SHALL
53 ESTABLISH WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES A DAY CARE
54 CENTER FACILITIES DEBT SERVICE RESERVE FUND WHICH SHALL BE USED TO PAY
55 TO THE DORMITORY AUTHORITY THE ANNUAL RENTALS PAYABLE TO THE DORMITORY
56 AUTHORITY BY SUCH PROVIDER WHICH HAVE ENTERED INTO A LEASE, SUBLEASE OR

1 OTHER AGREEMENT WITH THE DORMITORY AUTHORITY TO PROVIDE RESIDENTIAL
2 FACILITIES PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION. THE DORMITO-
3 RY AUTHORITY SHALL IDENTIFY TO THE COMMISSIONER OF THE OFFICE OF CHIL-
4 DREN AND FAMILY SERVICES WITH RESPECT TO FACILITIES, THE PROVIDERS WITH
5 WHICH IT HAS LEASES, SUBLEASES OR OTHER AGREEMENTS PURSUANT TO THIS
6 SUBDIVISION AND SHALL ANNUALLY CERTIFY THE AMOUNT OF ANNUAL RENTALS
7 REQUIRED TO BE PAID PURSUANT TO SUCH LEASES, SUBLEASES OR OTHER AGREE-
8 MENTS.

9 (2) (I) DAY CARE CENTER FACILITIES RESERVE ACCOUNT. THERE SHALL BE
10 CREATED AN ACCOUNT IN THE CUSTODY OF THE COMPTROLLER TO BE KNOWN AS THE
11 DAY CARE CENTER FACILITIES RESERVE ACCOUNT INTO WHICH SHALL BE DEPOSITED
12 ANY MONEYS HELD IN RESERVE BY THE OFFICE OF CHILDREN AND FAMILY SERVICES
13 ON BEHALF OF PARTICIPATING PROVIDERS WHICH SHALL BE USED IN PAYMENT OF
14 OBLIGATIONS PURSUANT TO AGREEMENTS MADE WITH THE DORMITORY AUTHORITY
15 PURSUANT TO THIS SUBDIVISION. UPON CERTIFICATION FROM THE DORMITORY
16 AUTHORITY THAT IT REQUIRES A PAYMENT OR PAYMENTS TO COMPLY WITH ANY
17 LEASE, SUBLEASE OR OTHER AGREEMENT PURSUANT TO THIS SUBDIVISION, THE
18 COMPTROLLER SHALL PAY FROM SUCH ACCOUNT ON OR BEFORE THE SPECIFIED DATE
19 TO THE DORMITORY AUTHORITY OR TO THE PAYING AGENT DESIGNATED BY THE
20 DORMITORY AUTHORITY THE AMOUNT OR AMOUNTS SO CERTIFIED. ANY PAYMENTS OF
21 MONEY FROM SUCH ACCOUNT SHALL BE MADE ON THE AUDIT AND WARRANT OF THE
22 STATE COMPTROLLER.

23 (II) DAY CARE CENTER FACILITIES DEBT SERVICE RESERVE FUNDS. THE
24 COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL CREATE
25 AND ESTABLISH ONE OR MORE SPECIAL FUNDS TO BE KNOWN AS DAY CARE CENTER
26 FACILITIES DEBT SERVICE RESERVE FUNDS, AND PURSUANT TO AGREEMENTS
27 BETWEEN THE PROVIDER AND THE DORMITORY AUTHORITY, SHALL PAY INTO SUCH
28 RESERVE FUNDS:

29 (A) ANY MONEYS APPROPRIATED AND MADE AVAILABLE BY THE STATE TO DAY
30 CARE PROVIDERS AND PLEDGED PURSUANT TO AGREEMENTS BETWEEN SUCH PROVIDERS
31 AND THE DORMITORY AUTHORITY; AND

32 (B) ANY OTHER MONEYS WHICH MAY BE MADE AVAILABLE TO THE AGENCY FOR THE
33 PURPOSE OF PAYMENT OF OBLIGATIONS MADE PURSUANT TO AGREEMENTS BETWEEN
34 SUCH PROVIDERS AND THE DORMITORY AUTHORITY, INCLUDING PAYMENTS FROM
35 SOCIAL SERVICES DISTRICTS PURSUANT TO AGREEMENTS AND CONTRACTS BETWEEN
36 SUCH DISTRICTS AND PARTICIPATING PROVIDERS. THE DEPARTMENT OF FAMILY
37 ASSISTANCE SHALL TRANSFER MONEYS HELD IN THE FUND ON BEHALF OF PARTIC-
38 IPATING PROVIDERS TO THE COMPTROLLER.

39 (III) REVENUES IN ANY SPECIAL ACCOUNT IN THE DAY CARE CENTER FACILI-
40 TIES RESERVE ACCOUNT MAY BE COMMINGLED WITH ANY OTHER MONEYS IN SUCH
41 ACCOUNT. ALL DEPOSITS OF SUCH REVENUES WITH BANKS AND TRUST COMPANIES
42 SHALL BE SECURED BY OBLIGATIONS OF THE UNITED STATES OR OF THE STATE OF
43 NEW YORK OR ITS POLITICAL SUBDIVISIONS. SUCH OBLIGATIONS SHALL HAVE A
44 MARKET VALUE AT LEAST EQUAL AT ALL TIMES TO, BUT NOT LESS THAN, ONE
45 HUNDRED FIVE PERCENT OF THE AMOUNT OF SUCH DEPOSITS. ALL BANKS AND TRUST
46 COMPANIES ARE AUTHORIZED TO GIVE SECURITY FOR SUCH DEPOSITS. ANY SUCH
47 REVENUES IN SUCH ACCOUNT MAY, IN THE DISCRETION OF THE COMPTROLLER, BE
48 INVESTED IN OBLIGATIONS OF THE UNITED STATES OR THE STATE OR OBLIGATIONS
49 THE PRINCIPAL OF AND INTEREST ON WHICH ARE GUARANTEED BY THE UNITED
50 STATES OR BY THE STATE. ANY INTEREST EARNED SHALL BE CREDITED TO SUCH
51 ACCOUNT.

52 (3) MEMORANDUM OF UNDERSTANDING. THE COMMISSIONER OF THE OFFICE OF
53 CHILDREN AND FAMILY SERVICES SHALL ENTER INTO A MEMORANDUM OF UNDER-
54 STANDING WITH THE COMPTROLLER AND THE DORMITORY AUTHORITY FOR IMPLEMEN-
55 TATION OF THIS SUBDIVISION. THE FORM AND CONTENT OF SUCH MEMORANDUM
56 SHALL BE APPROVED BY THE DIVISION OF BUDGET.

1 F. ALL STATE AND LOCAL OFFICIALS ARE AUTHORIZED AND REQUIRED TO TAKE
2 WHATEVER ACTIONS ARE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS
3 SUBDIVISION AND THE PROVISIONS OF ANY LEASES, SUBLEASES OR OTHER AGREE-
4 MENTS ENTERED INTO PURSUANT TO THIS SUBDIVISION, INCLUDING MAKING THE
5 REQUIRED PAYMENTS TO THE DORMITORY AUTHORITY.
6 S 5. This act shall take effect immediately.