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I N A S S E M B L Y

(PREFILED)

January 6, 2010

Introduced by M. of A. BRODSKY, JACOBS -- Multi-Sponsored by -- M. of A. GOTTFRIED, MAGEE, PEOPLES-STOKES, SWEENEY -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to creating the New York title guaranty authority

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

1 Section 1. Article 10-D of the public authorities law is amended by
2 adding a new title 4 to read as follows:

3 TITLE 4

4 NEW YORK TITLE GUARANTY AUTHORITY

5 SECTION 3974. SHORT TITLE.

6 3975. NEW YORK TITLE GUARANTY AUTHORITY.

7 3976. ADMINISTRATION OF THE AUTHORITY.

8 3977. GENERAL POWERS OF THE AUTHORITY.

9 3978. SPECIAL POWERS OF THE AUTHORITY.

10 3979. NEW YORK TITLE GUARANTY FUND.

11 3980. PARTICIPATING ATTORNEYS.

12 S 3974. SHORT TITLE. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE
13 "NEW YORK TITLE GUARANTY AUTHORITY ACT".

14 S 3975. NEW YORK TITLE GUARANTY AUTHORITY. 1. THERE IS HEREBY CREATED
15 THE NEW YORK TITLE GUARANTY AUTHORITY, TO INITIATE AND OPERATE A PROGRAM
16 WHICH SHALL OFFER GUARANTIES OF REAL PROPERTY TITLES IN THIS STATE. THE
17 AUTHORITY SHALL BE A CORPORATE GOVERNMENTAL AGENCY AND INSTRUMENTALITY
18 OF THE STATE CONSTITUTING A PUBLIC BENEFIT CORPORATION.

19 2. IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE, THE AUTHORITY MAY
20 ISSUE BONDS ONLY TO FINANCE COSTS, INCLUDING THE FUNDING OF BONDS ISSUED
21 BY THE AUTHORITY TO FINANCE COSTS, AND FUND RESERVES TO SECURE SUCH
22 BONDS.

23 3. THE AUTHORITY AND ITS CORPORATE EXISTENCE SHALL CONTINUE UNTIL
24 TERMINATED BY LAW, PROVIDED, HOWEVER, THAT NO SUCH TERMINATION SHALL
25 TAKE EFFECT SO LONG AS THE AUTHORITY SHALL HAVE BONDS OR OTHER OBLI-

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

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1 GATIONS OUTSTANDING UNLESS ADEQUATE PROVISION HAS BEEN MADE FOR THE
2 PAYMENT THEREOF.

3 S 3976. ADMINISTRATION OF THE AUTHORITY. 1. THE AUTHORITY SHALL BE
4 ADMINISTERED BY SEVEN DIRECTORS APPOINTED BY THE GOVERNOR, OF WHOM TWO
5 MEMBERS SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE TEMPORARY
6 PRESIDENT OF THE SENATE AND TWO MEMBERS SHALL BE APPOINTED UPON THE
7 RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY. THE POWERS AS SET FORTH
8 IN THE BY-LAWS OF THE BOARD SHALL BE ESTABLISHED AND VESTED IN AND BE
9 EXERCISED BY THE MEMBERS OF THE AUTHORITY AT AN INITIAL MEETING DULY
10 CALLED AND HELD AND FOUR MEMBERS SHALL CONSTITUTE A QUORUM.

11 2. THE MEMBERS OF THE NEW YORK TITLE GUARANTY AUTHORITY BOARD SHALL
12 RECEIVE NO COMPENSATION FOR THEIR SERVICES BUT SHALL BE REIMBURSED FOR
13 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR
14 DUTIES.

15 3. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF ANY GENERAL, SPECIAL
16 OR LOCAL LAW, ORDINANCE, RESOLUTION OR CHARTER, NO OFFICER, MEMBER OR
17 EMPLOYEE OF THE STATE OF NEW YORK, ANY CITY, COUNTY, TOWN OR VILLAGE,
18 ANY GOVERNMENTAL ENTITY OPERATING ANY PUBLIC SCHOOL OR COLLEGE, ANY
19 SCHOOL DISTRICT OR ANY OTHER PUBLIC AGENCY OR INSTRUMENTALITY WHICH
20 EXERCISES GOVERNMENTAL POWERS UNDER THE LAWS OF THE STATE, SHALL FORFEIT
21 HIS OR HER OFFICE OR EMPLOYMENT BY REASON OF HIS OR HER ACCEPTANCE OF
22 APPOINTMENT AS A DIRECTOR, OFFICER OR EMPLOYEE OF THE AUTHORITY, NOR
23 SHALL SERVICE AS SUCH DIRECTOR, OFFICER OR EMPLOYEE OF THE AUTHORITY BE
24 DEEMED INCOMPATIBLE OR IN CONFLICT WITH SUCH OFFICE OR EMPLOYMENT.

25 4. FOUR DIRECTORS SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY
26 BUSINESS OR THE EXERCISE OF ANY POWER OF THE AUTHORITY. NO ACTION SHALL
27 BE TAKEN BY THE AUTHORITY EXCEPT PURSUANT TO A FAVORABLE VOTE OF AT
28 LEAST FOUR DIRECTORS PARTICIPATING IN A MEETING AT WHICH SUCH ACTION IS
29 TAKEN.

30 5. THE AUTHORITY SHALL APPOINT A TREASURER AND MAY APPOINT OFFICERS
31 AND AGENTS AS IT MAY REQUIRE AND PRESCRIBE THEIR DUTIES.

32 S 3977. GENERAL POWERS OF THE AUTHORITY. EXCEPT AS OTHERWISE LIMITED
33 BY THIS TITLE, THE AUTHORITY SHALL HAVE THE FOLLOWING POWERS IN ADDITION
34 TO THOSE SPECIALLY CONFERRED ELSEWHERE IN THIS TITLE, SUBJECT ONLY TO
35 AGREEMENTS WITH BONDHOLDERS:

36 1. TO SUE AND BE SUED;

37 2. TO HAVE A SEAL AND ALTER THE SAME AT PLEASURE;

38 3. TO MAKE AND ALTER BY-LAWS FOR ITS ORGANIZATION AND MANAGEMENT AND,
39 SUBJECT TO AGREEMENTS WITH ITS BONDHOLDERS, TO MAKE AND ALTER RULES AND
40 REGULATIONS GOVERNING THE EXERCISE OF ITS POWERS AND FULFILLMENT OF ITS
41 PURPOSES UNDER THIS TITLE;

42 4. TO MAKE AND EXECUTE CONTRACTS AND ALL OTHER INSTRUMENTS OR AGREE-
43 MENTS NECESSARY OR CONVENIENT TO CARRY OUT ANY POWERS AND FUNCTIONS
44 EXPRESSLY GIVEN IN THIS TITLE;

45 5. TO COMMENCE ANY ACTION TO PROTECT OR ENFORCE ANY RIGHT CONFERRED
46 UPON IT BY ANY LAW, CONTRACT OR OTHER AGREEMENT;

47 6. TO BORROW MONEY AND ISSUE BONDS, OR TO REFUND THE SAME, AND TO
48 PROVIDE FOR THE RIGHTS OF THE HOLDERS OF ITS BONDS;

49 7. AS SECURITY FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON ANY
50 BONDS ISSUED BY IT PURSUANT TO THIS TITLE AND ANY AGREEMENTS MADE IN
51 CONNECTION THEREWITH AND FOR ITS OBLIGATIONS UNDER BOND FACILITIES, TO
52 PLEDGE ALL OR ANY PART OF ITS REVENUES OR ASSETS;

53 8. TO ACCEPT GIFTS, GRANTS, LOANS OR CONTRIBUTIONS OF FUNDS OR FINAN-
54 CIAL OR OTHER AID IN ANY FORM FROM THE COUNTY, STATE OR FEDERAL GOVERN-
55 MENT OR ANY AGENCY OR INSTRUMENTALITY THEREOF, OR FROM ANY OTHER SOURCE

1 AND TO EXPEND THE PROCEEDS FOR ANY OF ITS CORPORATE PURPOSES IN ACCORD-
2 ANCE WITH THE PROVISIONS OF THIS TITLE;

3 9. SUBJECT TO THE PROVISIONS OF ANY CONTRACT WITH BONDHOLDERS, TO
4 INVEST ANY FUNDS HELD IN RESERVES OR SINKING FUNDS, OR ANY FUNDS NOT
5 REQUIRED FOR IMMEDIATE USE OR DISBURSEMENT, AT THE DISCRETION OF THE
6 AUTHORITY, IN (A) OBLIGATIONS OF THE STATE OR THE UNITED STATES GOVERN-
7 MENT, (B) OBLIGATIONS THE PRINCIPAL AND INTEREST OF WHICH ARE GUARANTEED
8 BY THE STATE OR THE UNITED STATES GOVERNMENT, (C) CERTIFICATES OF DEPOS-
9 IT, WHETHER NEGOTIABLE OR NON-NEGOTIABLE, AND BANKER'S ACCEPTANCES OF
10 ANY OF THE FIFTY LARGEST BANKS IN THE UNITED STATES WHICH BANK, AT THE
11 TIME OF INVESTMENT, HAS AN OUTSTANDING UNSECURED, UNINSURED AND UNGUAR-
12 ANTEED DEBT ISSUE RANKED IN EITHER OF THE TWO HIGHEST RATING CATEGORIES
13 OF TWO NATIONALLY RECOGNIZED INDEPENDENT RATING AGENCIES, (D) COMMERCIAL
14 PAPER OF ANY BANK OR CORPORATION CREATED UNDER THE LAWS OF EITHER THE
15 UNITED STATES OR ANY STATE OF THE UNITED STATES WHICH COMMERCIAL PAPER,
16 AT THE TIME OF THE INVESTMENT, HAS RECEIVED THE HIGHEST RATING OF TWO
17 NATIONALLY RECOGNIZED INDEPENDENT RATING AGENCIES, (E) BONDS, DEBEN-
18 TURES, OR OTHER EVIDENCES OF INDEBTEDNESS, ISSUED OR GUARANTEED AT THE
19 TIME OF THE INVESTMENT BY THE FEDERAL NATIONAL MORTGAGE ASSOCIATION,
20 FEDERAL HOME LOAN MORTGAGE CORPORATION, STUDENT LOAN MARKETING ASSOCI-
21 ATION, FEDERAL FARM CREDIT SYSTEM, OR ANY OTHER UNITED STATES GOVERNMENT
22 SPONSORED AGENCY, PROVIDED THAT AT THE TIME OF THE INVESTMENT SUCH AGEN-
23 CY RECEIVES, OR ITS OBLIGATIONS RECEIVE, ANY OF THE THREE HIGHEST RATING
24 CATEGORIES OF TWO NATIONALLY RECOGNIZED INDEPENDENT RATING AGENCIES, (F)
25 ANY BONDS OR OTHER OBLIGATIONS OF ANY STATE OR THE UNITED STATES OF
26 AMERICA OR OF ANY POLITICAL SUBDIVISION THEREOF OR ANY AGENCY, INSTRU-
27 MENTALITY OR LOCAL GOVERNMENTAL UNIT OF ANY SUCH STATE OR POLITICAL
28 SUBDIVISION WHICH BONDS OR OTHER OBLIGATIONS, AT THE TIME OF THE INVEST-
29 MENT, HAVE RECEIVED ANY OF THE THREE HIGHEST RATINGS OF TWO NATIONALLY
30 RECOGNIZED INDEPENDENT RATING AGENCIES, (G) ANY REPURCHASE AGREEMENT
31 WITH ANY BANK OR TRUST COMPANY ORGANIZED UNDER THE LAWS OF ANY STATE OF
32 THE UNITED STATES OF AMERICA OR ANY NATIONAL BANKING ASSOCIATION OR
33 GOVERNMENT BOND DEALER REPORTING TO, TRADING WITH, AND RECOGNIZED AS A
34 PRIMARY DEALER BY THE FEDERAL RESERVE BANK OF NEW YORK, WHICH AGREEMENT
35 IS SECURED BY ANY ONE OR MORE OF THE SECURITIES DESCRIBED IN PARAGRAPH
36 (A), (B) OR (E) OF THIS SUBDIVISION WHICH SECURITIES SHALL AT ALL TIMES
37 HAVE A MARKET VALUE OF NOT LESS THAN THE FULL AMOUNT OF THE REPURCHASE
38 AGREEMENT AND BE DELIVERED TO ANOTHER BANK OR TRUST COMPANY ORGANIZED
39 UNDER THE LAWS OF NEW YORK STATE OR ANY NATIONAL BANKING ASSOCIATION
40 DOMICILED IN NEW YORK STATE, AS CUSTODIAN, AND (H) REVERSE REPURCHASE
41 AGREEMENTS WITH ANY BANK OR TRUST COMPANY ORGANIZED UNDER THE LAWS OF
42 ANY STATE OF THE UNITED STATES OF AMERICA OR ANY NATIONAL BANKING ASSO-
43 CIATION OR GOVERNMENT BOND DEALER REPORTING TO, TRADING WITH, AND RECOG-
44 NIZED AS A PRIMARY DEALER BY THE FEDERAL RESERVE BANK OF NEW YORK, WHICH
45 AGREEMENT IS SECURED BY ANY ONE OR MORE OF THE SECURITIES DESCRIBED IN
46 PARAGRAPH (A), (B) OR (E) OF THIS SUBDIVISION WHICH SECURITIES SHALL AT
47 ALL TIMES HAVE A MARKET VALUE OF NOT LESS THAN THE FULL AMOUNT OF THE
48 REPURCHASE AGREEMENT AND BE DELIVERED TO ANOTHER BANK OR TRUST COMPANY
49 ORGANIZED UNDER THE LAWS OF NEW YORK STATE OR ANY NATIONAL BANKING ASSO-
50 CIATION DOMICILED IN NEW YORK STATE, AS CUSTODIAN;

51 10. TO APPOINT SUCH OFFICERS AND EMPLOYEES AS IT MAY REQUIRE FOR THE
52 PERFORMANCE OF ITS DUTIES AND TO FIX AND DETERMINE THEIR QUALIFICATIONS,
53 DUTIES, AND COMPENSATION, AND TO RETAIN OR EMPLOY COUNSEL, AUDITORS AND
54 PRIVATE FINANCIAL CONSULTANTS AND OTHER SERVICES ON A CONTRACT BASIS OR
55 OTHERWISE FOR RENDERING PROFESSIONAL, BUSINESS OR TECHNICAL SERVICES AND

1 ADVICE; AND, IN TAKING SUCH ACTIONS, THE AUTHORITY SHALL CONSIDER THE
2 FINANCIAL IMPACT ON THE COUNTY; AND

3 11. TO DO ANY AND ALL THINGS NECESSARY OR CONVENIENT TO CARRY OUT ITS
4 PURPOSES AND EXERCISE THE POWERS EXPRESSLY GIVEN AND GRANTED IN THIS
5 TITLE; PROVIDED, HOWEVER, SUCH AUTHORITY SHALL UNDER NO CIRCUMSTANCES
6 ACQUIRE, HOLD OR TRANSFER TITLE TO, LEASE, OWN BENEFICIALLY OR OTHER-
7 WISE, MANAGE, OPERATE OR OTHERWISE EXERCISE CONTROL OVER ANY REAL PROP-
8 erty, ANY IMPROVEMENT TO REAL PROPERTY OR ANY INTEREST THEREIN OTHER
9 THAN A LEASE OR SUBLEASE OF OFFICE SPACE DEEMED NECESSARY OR DESIRABLE
10 BY THE AUTHORITY.

11 S 3978. SPECIAL POWERS OF THE AUTHORITY. THE NEW YORK STATE TITLE
12 GUARANTY AUTHORITY BOARD SHALL OFFER GUARANTIES OF REAL PROPERTY TITLES
13 IN THIS STATE. THE TERMS, CONDITIONS AND FORM OF THE GUARANTY CONTRACTS
14 SHALL BE FORMS APPROVED BY THE AUTHORITY. THE AUTHORITY SHALL FIX A
15 CHARGE FOR THE GUARANTY IN AN AMOUNT SUFFICIENT TO PERMIT THE PROGRAM TO
16 OPERATE ON A SELF-SUSTAINING BASIS, INCLUDING PAYMENT OF ADMINISTRATIVE
17 COSTS AND THE MAINTENANCE OF AN ADEQUATE RESERVE AGAINST CLAIMS UNDER
18 THE TITLE GUARANTY PROGRAM.

19 S 3979. NEW YORK TITLE GUARANTY FUND. 1. A TITLE GUARANTY FUND IS
20 CREATED. FUNDS COLLECTED UNDER THIS PROGRAM SHALL BE PLACED IN THE TITLE
21 GUARANTY FUND AND ARE AVAILABLE TO PAY ALL CLAIMS, NECESSARY RESERVES
22 AND ALL ADMINISTRATIVE COSTS OF THE TITLE GUARANTY PROGRAM. MONEYS IN
23 THE FUND SHALL NOT REVERT TO THE GENERAL FUND AND INTEREST ON THE MONEYS
24 IN THE FUND SHALL REQUIRE COSTS OF TITLE INSURANCE TO BE SUFFICIENT
25 ENOUGH TO INCLUDE FIFTY MILLION DOLLARS ANNUALLY FOR AFFORDABLE HOUSING
26 AND FIFTY MILLION DOLLARS ANNUALLY TO ENSURE THAT THE STATE'S ROADS AND
27 BRIDGES ARE IN A STATE OF GOOD REPAIR, AND OTHER SUCH PURPOSES AS MAY BE
28 REQUIRED BY THE LEGISLATURE AND THE GOVERNOR.

29 2. A TITLE GUARANTY, CLOSING PROTECTION LETTER, OR GAP COVERAGE ISSUED
30 UNDER THIS PROGRAM IS AN OBLIGATION OF THE AUTHORITY ONLY AND CLAIMS ARE
31 PAYABLE SOLELY AND ONLY OUT OF THE MONEYS, ASSETS, AND REVENUES OF THE
32 TITLE GUARANTY FUND AND ARE NOT AN INDEBTEDNESS OR LIABILITY OF THE
33 STATE. THE STATE IS NOT LIABLE ON ANY GUARANTY, CLOSING PROTECTION
34 LETTER, OR GAP COVERAGE.

35 3. THE AUTHORITY SHALL CONSULT WITH THE INSURANCE DEPARTMENT IN DEVEL-
36 OPING A GUARANTY CONTRACT ACCEPTABLE TO THE SECONDARY MARKET AND DEVEL-
37 OPING ANY OTHER FEATURE OF THE PROGRAM WITH WHICH THE INSURANCE DIVISION
38 MAY HAVE SPECIAL EXPERTISE. THE INSURANCE DEPARTMENT SHALL ESTABLISH THE
39 AMOUNT FOR A LOSS RESERVE FUND. EXCEPT AS PROVIDED IN THIS SECTION, THE
40 TITLE GUARANTY PROGRAM IS NOT SUBJECT TO THE JURISDICTION OF OR REGU-
41 LATION BY THE INSURANCE DEPARTMENT.

42 S 3980. PARTICIPATING ATTORNEYS. 1. EACH PARTICIPATING ATTORNEY AND
43 ABTRACTOR MAY BE REQUIRED TO PAY AN ANNUAL PARTICIPATION FEE TO BE
44 ELIGIBLE TO PARTICIPATE IN THE TITLE GUARANTY PROGRAM. THE FEE, IF ANY,
45 SHALL BE SET BY THE AUTHORITY, SUBJECT TO THE APPROVAL OF THE BOARD.

46 2. THE PARTICIPATION OF ABTRACTORS AND ATTORNEYS SHALL BE IN ACCORD-
47 ANCE WITH RULES ESTABLISHED BY THE BOARD.

48 A. (1) EACH PARTICIPANT SHALL AT ALL TIMES MAINTAIN LIABILITY COVERAGE
49 IN AMOUNTS APPROVED BY THE AUTHORITY. UPON PAYMENT OF A CLAIM BY THE
50 AUTHORITY THE AUTHORITY SHALL BE SUBROGATED TO THE RIGHTS OF THE CLAIM-
51 ANT AGAINST ALL PERSONS RELATING TO THE CLAIM.

52 (2) ADDITIONALLY, EACH PARTICIPATING ABTRACTOR IS REQUIRED TO OWN OR
53 LEASE, AND MAINTAIN AND USE IN THE PREPARATION OF ABSTRACTS, AN
54 UP-TO-DATE ABSTRACT TITLE PLANT INCLUDING TRACT INDICES FOR REAL ESTATE
55 FOR EACH COUNTY IN WHICH ABSTRACTS ARE PREPARED FOR REAL PROPERTY TITLES
56 GUARANTEED BY THE DIVISION. THE TRACT INDICES SHALL CONTAIN A REFERENCE

1 TO ALL INSTRUMENTS AFFECTING THE REAL ESTATE WHICH ARE RECORDED IN THE
2 OFFICE OF THE COUNTY RECORDER, AND SHALL COMMENCE NOT LESS THAN FORTY
3 YEARS PRIOR TO THE DATE THE ABTRACTOR COMMENCES PARTICIPATION IN THE
4 TITLE GUARANTY PROGRAM. HOWEVER, A PARTICIPATING ATTORNEY PROVIDING
5 ABSTRACT SERVICES CONTINUOUSLY FROM NOVEMBER TWELFTH, NINETEEN HUNDRED
6 EIGHTY-SIX, TO THE DATE OF APPLICATION, EITHER PERSONALLY OR THROUGH
7 PERSONS UNDER THE ATTORNEY'S SUPERVISION AND CONTROL IS EXEMPT FROM THE
8 REQUIREMENTS OF THIS SUBPARAGRAPH.

9 B. THE AUTHORITY MAY WAIVE THE REQUIREMENTS OF THIS SECTION PURSUANT
10 TO AN APPLICATION OF AN ATTORNEY OR ABTRACTOR WHICH SHOWS THAT THE
11 REQUIREMENTS IMPOSE A HARDSHIP TO THE ATTORNEY OR ABTRACTOR AND THAT
12 THE WAIVER CLEARLY IS IN THE PUBLIC INTEREST OR IS ABSOLUTELY NECESSARY
13 TO ENSURE AVAILABILITY OF TITLE GUARANTIES THROUGHOUT THE STATE.

14 3. PRIOR TO THE ISSUANCE OF A TITLE GUARANTY, THE AUTHORITY SHALL
15 REQUIRE EVIDENCE THAT AN ABSTRACT OF TITLE TO THE PROPERTY IN QUESTION
16 HAS BEEN BROUGHT UP-TO-DATE AND CERTIFIED BY A PARTICIPATING ABTRACTOR
17 IN A FORM APPROVED BY AUTHORITY RULES AND A TITLE OPINION ISSUED BY A
18 PARTICIPATING ATTORNEY IN THE FORM APPROVED IN THE RULES STATING THE
19 ATTORNEY'S OPINION AS TO THE TITLE. THE AUTHORITY SHALL REQUIRE EVIDENCE
20 OF THE ABSTRACT BEING BROUGHT UP-TO-DATE AND THE ABTRACTOR SHALL RETAIN
21 EVIDENCE OF THE ABSTRACT AS DETERMINED BY THE BOARD.

22 4. THE ATTORNEY RENDERING A TITLE OPINION SHALL BE AUTHORIZED TO ISSUE
23 A TITLE GUARANTY CERTIFICATE SUBJECT TO THE RULES OF THE AUTHORITY.

24 S 2. This act shall take effect immediately.