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

3954

2009-2010 Regular Sessions

I N S E N A T E

April 7, 2009

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to create the New York state child care facilities finance agency and providing for its functions, powers and duties

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

Section 1. The New York state child care facilities finance agency act is hereby enacted to read as follows:

NEW YORK STATE CHILD CARE FACILITIES
FINANCE AGENCY ACT

Section 1. Short title.
2. Declaration of policy and statement of purposes.
3. Definitions.
4. New York state child care facilities finance agency.
5. Powers of the agency.
6. Bonds and notes of the agency.
7. Child care facilities projects reserve funds and appropriations.
8. Bonds and notes as legal investments.
9. Exemption from taxation of property and income.
10. Exemption from taxation of notes and bonds.
11. Agreement with the state.
12. State's right to require redemption of bonds.
13. Remedies of noteholders and bondholders.
14. Monies of the agency.
15. Assistance by state officers, departments, boards and commissions.
16. Annual report.
17. Bond reserve insurance fund.
18. Act not affected if in part unconstitutional.
19. Inconsistent provisions in other laws superseded.

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

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Section 1. Short title. This act shall be known and may be cited as the "New York state child care facilities finance agency act".

S 2. Declaration of policy and statement of purposes. The availability of child care for the inhabitants of the state are matters of public concern. In furtherance of this purpose, it is the policy of the state to make available child care services at a reasonable cost by the private and public sectors in modern child care facilities accessible to the communities to be served.

The legislature has heretofore found that a serious shortage of child care services exists in many communities throughout the state; that many child care facilities throughout the state cannot financially provide affordable child care services to people who are in need of their services, that such a shortage of affordable child care services deny to the people of the state the benefits of child care of the highest quality and that affordable child care services are an essential need to the state's population. The legislature has heretofore found and declared that the accomplishment of these purposes cannot be readily achieved by the ordinary unaided operation of private enterprise and to this end has constituted and empowered the New York state finance housing agency, a multi-purpose corporate government agency of the state, to obtain funds through the issuance of its notes and bonds to finance the construction, acquisition, reconstruction and improvement of child care facilities in addition to issuing its notes and bonds to carry out other program responsibilities which touch on the need for affordable and accessible child care services for the vast majority of the state's residents.

In order to permit an acceleration in the implementation of affordable and accessible child care services in areas where the public need remains urgent, without jeopardizing the orderly marketing by the New York state housing finance agency of its notes and bonds for other program purposes, it is hereby declared that a separate corporate governmental agency, to be known as the "New York child care facilities finance agency", should be created as a single purpose agency to act in concert with the New York state housing finance agency and to devote its entire energy and resources to the provision of additional funds for the construction of child care facilities by any entity or organization deemed appropriate by the agency.

In this manner, the broadest possible base of investment by the greatest number of the general public may be had and the initiative and strength of our private enterprise economy may most readily be harnessed for the benefit of the people of the state.

S 3. Definitions. As used in this act, unless a different meaning clearly appears from the context:

1. "Agency" shall mean the corporate governmental agency created by section four of this act.

2. "Amortized value" means, when used with respect to securities purchased at a premium above or a discount below par, the value as of any given date obtained by dividing the total amount of the premium or discount at which such securities were purchased by the number of days remaining to maturity on such securities at the time of such purchase and by multiplying the amount so calculated by the number of days having passed since the date of such purchase; and (a) in the case of securities purchased at a premium, by deducting the product thus obtained from the purchase price, and (b) in the case of securities purchased at a discount, by adding the product thus obtained to the purchase price.

3. "Bonds" and "notes" shall mean bonds and notes, respectively, issued by the agency pursuant to this act.

4. "Child care project bonds" shall mean bonds and notes, respectively, issued by the agency for the purpose of making mortgage loans to eligible borrowers.

5. "Commissioner" shall mean the New York state commissioner of the office of children and family services.

6. "Department" shall mean the office of children and family services within the New York state department of family assistance.

7. "Eligible borrower" shall mean any entity or organization whose project shall meet all the licensing requirements imposed pursuant to the social services law and the rules and regulations promulgated thereunder.

8. "Mortgage loan" shall mean a loan made by the agency to an eligible borrower in an amount not to exceed the total project cost and secured by a first mortgage lien on the real property of which the child care project consists and the personal property attached to or used in connection with the construction, acquisition, reconstruction, rehabilitation, improvement or operation of the 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 finds that such property is not essential for the rendition of child care services, (b) the agency consents to such exclusion.

The term "mortgage loan" shall also mean and include a loan made by the agency to any entity or organization deemed appropriate by the agency not to exceed ninety-five per centum of the child care project cost and secured by a first mortgage lien on the real property of which the child care project consists and the personal property attached to or used in connection with the construction, acquisition, reconstruction, rehabilitation, improvement, or operation of the child care project. Notwithstanding the foregoing provisions of this subdivision or any other provision of this section to the contrary, any personal property may be excluded from lien of the mortgage provided (a) the commissioner finds that such property is not essential for the child care project, and (b) the agency consents to such exclusion.

9. "Bond reserve insurance fund" shall mean the fund created by section seventeen of this act.

S 4. New York state child care facilities finance agency. 1. There is hereby created the New York state child care facilities finance agency. The agency shall be a corporate governmental agency constituting a public benefit corporation. Its membership shall consist of the commissioner of taxation and finance, the commissioner of the office of children and family services, the director of the budget, the chair of the New York state housing finance agency and three members to be appointed by the governor with the advice and consent of the senate. The members first appointed by the governor shall serve for terms ending two, four and six years, respectively, from January first next succeeding their appointment. Their successors shall serve for terms of six years each. Members shall continue in office until their successors have been appointed and qualified. In the event of a vacancy occurring in the office of any member by death, resignation or otherwise, the governor shall appoint a successor with the advice and consent of the senate to serve for the balance of the unexpired term. The provisions of section 39 of the public officers law shall apply to such members. The commis-

sioner of the office of children and family services shall serve as chair of the agency.

2. The powers of the agency shall be vested in and exercised by no less than four of the members then in office. The commissioner of taxation and finance, the commissioner of the office of children and family services and the director of the budget each may appoint a person from their respective department, office or division to represent such member, respectively, at all meetings of the agency from which such member may be absent. Any such representative so designated shall have the power to attend and to vote at any meeting of the agency from which the member so designating him or her as a representative is absent with the same force and effect as if the member designating him or her were present and voting. Such designation shall be by written notice filed with the chair of the agency by each of the said members. The designation of such persons shall continue until revoked at any time by written notice to the chair by the respective member making the designation. Such designation shall not be deemed to limit the power of the appointing member to attend and vote at any meeting of the agency.

3. The members shall serve without salary, but each member shall be entitled to reimbursement for his or her actual and necessary expenses incurred in the performance of his or her official duties, and, except in the case of the commissioner of taxation and finance, the commissioner of the office of children and family services and the director of the budget, a per diem allowance of one hundred dollars when rendering services as such member, provided that the aggregate of such per diem allowance to any one member in any one fiscal year shall not exceed the sum of five thousand dollars.

4. Such members, except as otherwise provided by law, may engage in private employment, or in a profession or business. The agency, its members, officers and employees shall be subject to the provisions of sections 73 and 74 of the public officers law.

5. The chief executive officer of the agency shall be the executive director of the New York state housing finance agency.

6. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state or of any civil division thereof shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of his or her acceptance of membership on the agency created by this section; provided however, that a member who holds such other public office or employment shall receive no additional compensation or allowance for services rendered pursuant to this act, but shall be entitled to reimbursement for his or her actual and necessary expenses incurred in the performance of such services.

7. The governor may remove any member appointed by him or her for inefficiency, neglect of duty or misconduct in office after giving him or her a copy of the charges against him or her and an opportunity to be heard, in person or by counsel in his or her defense, upon not less than ten days' notice. If any such member shall be removed, the governor shall file in the office of the department of state a complete statement of charges made against such member and his or her findings thereon, together with a complete record of the proceeding.

8. The agency and its corporate existence shall continue until terminated by law, provided, however, that no such law shall take effect so long as the agency shall have bonds, notes and other obligations outstanding, unless adequate provision has been made for the payment thereof. Upon termination of the existence of the agency, all its rights and properties shall pass to and be vested in the state.

9. A majority of the members of the agency then in office shall constitute a quorum for the transaction of any business or the exercise of any power or function of the agency. The agency may delegate to one or more of its members, or its officers, agents or employees, such powers and duties as it may deem proper.

S 5. Powers of the agency. Except as otherwise limited by this act, the agency shall have power:

1. To sue and be sued;

2. To have a seal and alter the same at pleasure;

3. To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this act;

4. To make and alter by-laws for its organization and internal management;

5. To acquire, hold and dispose of personal property for its corporate purposes;

6. To appoint officers, agents and employees, prescribe their duties and qualifications and fix their compensation;

7. To borrow money and issue negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof;

8. To invest any funds held in reserve or sinking funds, or any monies not required for immediate use or disbursement, at the discretion of the agency, in obligations of the state or the United States government or obligations the principal and interest of which are guaranteed by the state or the United States government, or in any other obligations in which the comptroller of the state of New York is authorized to invest pursuant to section 98 of the state finance law;

9. Subject to the approval of the agency, to make mortgage loans to eligible borrowers and to undertake commitments to make any such mortgage loans;

10. Subject to the approval of the commissioner of the agency, to sell, at public or private sale, any mortgage or other obligation securing a mortgage loan made by the agency;

11. In connection with the making of mortgage loans and commitments therefor to non-profit hospital corporations and non-profit medical corporations constituting eligible borrowers or nursing home companies, to make and collect from such corporations and companies such fees and charges, including but not limited to reimbursement of all costs of financing by the agency, service charges and insurance premiums, as the agency shall determine to be reasonable;

12. In connection with any property on which it has made a mortgage loan, to foreclose on any such property or commence any action to protect or enforce any right conferred upon it by any law, mortgage contract or other agreement, and to bid for and purchase such property at any foreclosure or at any other sale, or acquire or take possession of any such property; and in such event the agency may complete, administer, pay the principal of and interest on any obligations incurred in connection with such property, dispose of, and otherwise deal with, such property, in such manner as may be necessary or desirable to protect the interests of the agency therein;

13. To procure insurance against any loss in connection with its property and other assets (including mortgages and mortgage loans) in such amounts, and from such insurers, as it deems desirable;

14. To accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof or from the state or from any other

source and to comply, subject to the provisions of this act, with the terms and conditions thereof;

15. To engage the services of private consultants on a contract basis for rendering professional and technical assistance and advice;

16. To enter into a contract with the New York state housing finance agency to market and service any agency bonds and notes approved by the agency and to contract with the New York state housing finance agency to render such other services as the agency may request, including but not limited to the use of the premises, personnel and personal property of the New York state housing finance agency, and to provide for reimbursement to the New York state housing finance agency from the agency for any expenses necessarily incurred by the New York state housing finance agency in carrying out the terms of any such contract. Any such contract shall be subject to the separate approval of the director of the budget;

17. Subject to the approval of the agency, to acquire by purchase from the New York state housing finance agency any mortgage or other obligation securing a loan made by the New York state housing finance agency to an eligible borrower and to sell same at public or private sale;

18. To acquire by purchase from the New York state housing finance agency its right, title and interest in real property, leaseholds and subleaseholds relating to the municipal health facilities improvement program;

19. To do any and all things necessary or convenient to carry out its purposes and exercise the powers expressly given and granted in this act.

S 6. Bonds and notes of the agency. 1. (a) The agency shall have power and is hereby authorized from time to time to issue its negotiable bonds and notes in conformity with applicable provisions of the uniform commercial code in such principal amount as, in the opinion of the agency, shall be necessary to provide sufficient funds for achieving its corporate purposes, including the making of mortgage loans and the construction, acquisition, reconstruction, rehabilitation or improvement of child care facilities, the payment of interest on bonds and notes of the agency, establishment of reserves to secure such bonds and notes, and all other expenditures of the agency incident to and necessary or convenient to carry out its corporate purposes and powers;

(b) The agency shall have power, from time to time, to issue renewal notes, to issue bonds to pay notes and whenever it deem refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any other purpose. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded;

(c) Except as may otherwise be expressly provided by the agency, every issue if its notes or bonds shall be general obligations of the agency payable out of any revenues or monies of the agency, subject only to any agreements with the holders of particular notes or bonds pledging any particular receipts or revenues.

2. The notes and bonds shall be authorized by resolution of the members, shall bear such date or dates, and shall mature at such time or times, in the case of any such note, or any renewals thereof, issued for achieving its corporate purposes other than the making of mortgage loans, not exceeding five years, from the date of issue of such original note, and in the case of any such note, or any renewals thereof, issued

for the purpose of making mortgage loans, not exceeding seven years, from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution or resolutions may provide. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of the agency may be sold by the agency, at public or private sale, at such price or prices as the agency shall determine. No notes or bonds of the agency may be sold by the agency at private sale, however, unless such sale and the terms thereof have been approved in writing by (a) the comptroller, where such sale is not to the comptroller, or (b) the director of the budget, where such sale is to the comptroller.

3. Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:

(a) pledging all or any part of the fees and charges made or received by the agency, and all or any part of the monies received in payment of mortgage loans and interest thereon, and any other monies received or to be received, to secure the payment of the child care facility project bonds or of any issue thereof, subject to such agreement with bondholders or noteholders as may then exist;

(b) pledging all or any part of the assets of the agency, including mortgages and obligations securing the same, to secure the payment of the child care facility project bonds, subject to such agreements with bondholders or noteholders as may then exist, provided that no resolution or resolutions of the agency authorizing bonds and notes shall (i) pledge all or any portion of the rentals paid to the agency with respect to child care facilities financed with the proceeds of child care facilities bonds or notes, or (ii) pledge any other assets, monies or accounts pledged to the agency as security for the payment of rentals with respect to child care facilities financed with the proceeds of child care facilities bonds or notes;

(c) the use and disposition of the gross income from mortgages owned by the agency and payment of principal of mortgages owned by the agency;

(d) pledging all or any part of the rentals paid to the agency with respect to child care facilities financed with the proceeds of child care facilities bonds or notes or any other assets, monies or accounts pledged or assigned to the agency as security for the payment of such rentals, all subject to any agreement with noteholders or bondholders as may then exist and provided that no resolution or resolutions authorizing child care facilities bonds and notes shall (i) pledge all or any part of the fees and charges made or received by the agency pursuant to subdivision eleven of section five of this act in connection with the making of mortgage loans or commitments therefor, or all or any part of the monies received in payment of such mortgage loans and interest thereon, or (ii) pledge all or any part of the mortgages of the agency or obligations securing the same, or (iii) provide as to the use and disposition of the gross income from mortgages owned by the agency or as to the payment of principal of mortgages owned by the agency;

(e) the setting aside of reserves or sinking funds and the regulation and disposition thereof;

(f) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

(g) limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; the refunding of outstanding or other notes or bonds;

(h) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(i) limitations on the amount of monies to be expended by the agency for operating, administrative or other expenses of the agency;

(j) vesting in a trustee or trustees such property, rights, powers and duties in trust as the agency may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this act, and limiting or abrogating the right of the bondholders to appoint a trustee under this act or limiting the right, powers and duties of such trustee;

(k) any other matters, of like or different character, which in any way affect the security or protection of the notes or bonds.

4. It is the intention hereof that any pledge made by the agency shall be valid and binding from the time when the pledge is made; that the monies or property so pledged and thereafter received by the agency shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

5. Neither the members of the agency nor any person executing the notes or bonds shall be liable personally on the notes or bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

6. The agency, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the agency, which shall thereupon be cancelled, at a price not exceeding (a) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date thereon, or (b) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

7. The state shall not be liable on notes or bonds of the agency and such notes and bonds shall not be a debt of the state, and such notes and bonds shall contain on the face thereof a statement to such effect.

S 7. Child care facilities projects reserve funds and appropriations. 1. (a) For the purposes of the issuance by the agency of child care facility project bonds, the term "child care facility capital reserve fund requirement" shall mean, as of any particular date of computation, an amount of money equal to the greatest of the respective amounts, for the then current or any succeeding calendar year, of annual debt service payments of the agency, such annual debt service payments for any calendar year being an amount of money equal to the aggregate of (i) all interest payable during such calendar year on all child care facility project bonds of the agency then outstanding on said date of computation, plus (ii) the principal amount of all child care facility project

bonds of the agency then outstanding on said date of computation which mature during such calendar year, plus (iii) the amount of all sinking fund payments payable during such calendar year with respect to all child care facility project bonds of the agency outstanding on said date of computation; and the term "sinking fund payment" shall mean the amount of money specified in the resolution authorizing term bonds as payable into a sinking fund for the amortization of such term bonds. The agency shall create and establish a special fund to be known as the child care facility capital reserve fund and may pay into such reserve fund (1) any monies appropriated and made available by the state for the purposes of such fund, (2) any proceeds of sale of child care facility project notes or bonds, to the extent provided in the resolution of the agency authorizing the issuance thereof, and (3) any other monies which may be made available to the agency for the purposes of such fund from any other source or sources. The monies held in or credited to the child care facility capital reserve fund established under this section, except as hereinafter provided, shall be used solely for the payment of the principal of child care facility project bonds of the agency secured by such reserve fund, as the same mature, sinking fund payments, the purchase of such child care facility project bonds of the agency, the payment of interest on such child care facility projects bonds of the agency, or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided, however, that monies in such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the child care facility capital reserve fund requirement, except for the purpose of paying principal and interest on the child care facility project bonds of the agency secured by such reserve fund maturing and becoming due and any sinking fund payments and for the payment of which other monies of the agency are not available. Any income or interest earned by, or increment to, the child care facility capital reserve fund due to the investment thereof may be transferred to any other fund or account of the agency to the extent it does not reduce the amount of the child care facility capital reserve fund below the child care facility capital reserve fund requirement.

(b) The agency shall not issue child care facility project bonds and notes in an aggregate principal amount exceeding two billion dollars, excluding child care facility project bonds and child care facility notes issued to refund outstanding child care facility project bonds and notes. The agency shall not issue child care facility project bonds at any time secured by the child care facility capital reserve fund if upon issuance, the amount in the child care facility capital reserve fund will be less than the child care facility capital reserve fund requirement, unless the agency, at the time of issuance of such bonds, shall deposit in such reserve fund from the proceeds of the bonds so to be issued, or otherwise, an amount which together with the amount then in such reserve fund, will be not less than the child care facility capital reserve fund requirement.

(c) To assure the continued operation and solvency of the agency for the carrying out of the public purposes of this act, provision is made in paragraph (a) of this subdivision for the accumulation in the child care facility capital reserve fund of an amount equal to the child care facility capital reserve fund requirement. In order further to assure the maintenance of the child care facility capital reserve fund, there shall be annually apportioned and paid to the agency for deposit in the child care facility capital reserve fund such sum, if any, as shall be

certified by the chairman of the agency to the governor and director of the budget as necessary to restore such reserve fund to an amount equal to the child care facility capital reserve fund requirement. The chair of the agency shall annually, on or before December first, make and deliver to the governor and director of the budget his or her certificate stating the sums, if any, required to restore the child care facility capital reserve fund to the amount aforesaid and the sums so certified, if any, shall be apportioned and paid to the agency during the then current state fiscal year. The principal amount of bonds secured by the child care facility capital reserve fund to which state funds are apportionable pursuant to this paragraph shall be limited to the total amount of bonds and notes outstanding on the effective date of this act, plus the total amount of bonds and notes contracted after the effective date of this act to finance projects in progress on the effective date of this act as determined by the New York state public authorities control board created pursuant to section 50 of the public authorities law whose affirmative determination shall be conclusive as to all matters of law and fact solely for the purposes of the limitations contained in this paragraph, but in no event shall the total amount of bonds so secured by such a capital reserve fund or funds exceed two hundred forty million dollars, excluding bonds issued to refund such outstanding bonds until the date of redemption of such outstanding bonds. As outstanding bonds so secured are paid, the amount so secured shall be reduced accordingly but the redemption of such outstanding bonds from the proceeds of refunding bonds shall not reduce the amount so secured.

(d) In computing the child care facility capital reserve fund for the purposes of this section, securities in which all or a portion of such reserve fund shall be invested shall be valued at par if purchased at par, or if purchased at other than par, at amortized value.

2. The agency shall create and establish one or more special funds (herein referred to as child care facility reserve funds) and shall, to the extent provided in the applicable bond resolution of the agency authorizing the issuance of child care facility project bonds, pay into any such fund the fees and charges collected by the agency pursuant to subdivision eleven of section five of this act and any monies which the agency shall transfer from the child care facility capital reserve fund pursuant to the provisions of paragraph (a) of subdivision one of this section. Such monies and any other monies paid into a child care facility general reserve fund may, in the discretion of the agency, but subject to agreements with bondholders and noteholders, be used by the agency (a) for the repayment of advances from the state in accordance with the provisions of repayment agreements between the agency and the director of the budget, (b) to reimburse the department the reasonable costs of the services performed by the commissioner and the department pursuant to this act, (c) to pay all costs, expenses and charges of financing, including fees and expenses of trustees and paying agents, (d) for transfers to the child care facility capital reserve fund, (e) for the payment of principal and interest on child care facility project bonds and project notes issued by the agency when the same shall become due whether at maturity or on call for redemption and for the payment of any redemption premium required to be paid where such child care facility project bonds and notes are redeemed prior to their stated maturities and any sinking fund payments, and to purchase child care facility project bonds or notes issued by the agency, or (f) for such other

corporate purposes of the agency as the agency in its discretion shall determine and provide.

S 8. Bonds and notes as legal investments. The bonds and notes of the agency are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions, all insurance companies and associations, and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and saving associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control and belonging to them.

S 9. Exemption from taxation of property and income. The property of the agency and its income and operations shall be exempt from taxation.

S 10. Exemption from taxation of notes and bonds. It is hereby determined that the creation of the agency is in all respects for the benefit of the people of the state and for the improvement of their health, safety, welfare, comfort and security, and that said purposes are public purposes and that the agency will be performing an essential governmental function in the exercise of the powers conferred upon it by this act. The state covenants with the purchasers and all subsequent holders and transferees of notes and bonds issued by the agency, in consideration of the acceptance of and payment for the notes and bonds, that the notes and bonds of the agency, issued pursuant to this act and the income therefrom and all its fees, charges, gifts, grants, revenues, receipts, and other monies received or to be received, pledged to pay or secure the payment of such notes or bonds shall at all times be free from taxation, except for estate and gift taxes and taxes on transfers.

S 11. Agreement with the state. The state does hereby pledge to and agree with the holders of any notes or bonds issued under this act, that the state will not limit or alter the rights hereby vested in the agency to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until such notes or bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The agency is authorized to include this pledge and agreement of the state in any agreement with the holders of such notes or bonds.

S 12. State's right to require redemption of bonds. Notwithstanding and in addition to any provisions for the redemption of bonds which may be contained in any contract with the holders of the bonds, the state may, upon furnishing sufficient funds therefor, require the agency to redeem, prior to maturity, as a whole, any issue of bonds on any interest payment date not less than twenty years after the date of the bonds of such issue at one hundred five per centum of their face value and accrued interest or at such lower redemption price as may be provided in the bonds in case of the redemption thereof as a whole on the redemption date. Notice of such redemption shall be published in at least two newspapers publishing and circulating respectively in the cities of Albany and New York at least twice, the first publication to be at least thirty days before the date of redemption.

S 13. Remedies of noteholders and bondholders. 1. In the event that the agency shall default in the payment of principal of or interest on

any issue of notes or bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the agency shall fail or refuse to comply with the provisions of this act, or shall default in any agreement made with the holders of any issue of notes or bonds, the holders of twenty-five per centum in aggregate principal amount of the notes or bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county of Albany and approved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes or bonds for the purposes herein provided.

2. Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such notes or bonds then outstanding shall, in his, her or its own name:

(a) by suit, action or proceeding in accordance with the civil practice law and rules, enforce all rights of the noteholders or bondholders, including the right to require the agency to collect fees and charges and interest and amortization payment on mortgage loans made by it adequate to carry out any agreement as to, or pledge of, such fees and charges and interest and amortization payments on such mortgages, and other properties and to require the agency to carry out any other agreements with the holders of such notes or bonds and to perform its duties under this act;

(b) bring suit upon such notes or bonds;

(c) by action or suit, require the agency to account as if it were the trustee of an express trust for the holders of such notes or bonds;

(d) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes or bonds;

(e) declare all such notes or bonds due and payable, and if all defaults shall be made good, then, with the consent of the holders of twenty-five per centum of the principal amount of such notes or bonds then outstanding, to annul such declaration and its consequences.

3. Such trustee shall in addition to the foregoing have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

4. The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such noteholders or bondholders. The venue of any such suit, action or proceeding shall be laid in the county of Albany.

5. Before declaring due and payable the principal of notes or bonds issued in connection with any mortgage or other obligations securing a mortgage loan made by the agency, the trustee shall first give thirty days' notice in writing to the governor, to the agency, to the state commissioner of health and to the attorney general of the state.

S 14. Monies of the agency. 1. All monies of the agency, except as otherwise authorized or provided in this act, shall be paid to the commissioner of taxation and finance as agent of the agency, who shall not commingle such monies with any other monies. Such monies shall be deposited in a separate bank account or accounts. The monies in such accounts shall be paid out on checks signed by the commissioner of taxation and finance on requisition of the chair of the agency or of such other officer or employee or officers or employees as the agency shall authorize to make such requisition. All deposits of such monies shall, if required by the commissioner of taxation and finance or the agency,

be secured by obligations of the United States or of the state of a market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give such security for such deposits.

Notwithstanding the provisions of this section, the agency shall have power, subject to the approval of the commissioner of taxation and finance, to contract with the holders of any of its notes or bonds, as to the custody, collection, securing, investment and payment of any monies of the agency, of any monies held in trust or otherwise for the payment of notes or bonds, and to carry out such contract. Monies held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds and deposits of such monies may be secured in the same manner as monies of the agency, and all banks and trust companies are authorized to give such security for such deposits.

2. Subject to agreements with noteholders and bondholders and the approval of the comptroller, the agency shall prescribe a system of accounts.

3. The comptroller, or his or her legally authorized representative, is hereby authorized and empowered from time to time to examine the books and accounts of the agency including its receipts, disbursements, contracts, reserve funds, sinking funds, investments, and any other matters relating to its financial standing. Such an examination shall be conducted by the comptroller at least once in every five years; the comptroller is authorized, however, to accept from the agency, in lieu of such an examination, an external examination of its books and accounts made at the request of the agency.

4. The agency shall submit to the governor, chair of the senate finance committee, chair of the assembly ways and means committee and the comptroller, within thirty days of the receipt thereof by the agency, a copy of the report of every external examination of the books and accounts of the agency other than copies of the reports of such examinations made by the comptroller.

S 15. Assistance by state officers, departments, boards and commissions. 1. The department of audit and control, department of law, office of children and family services, and all other state officers, departments, boards, divisions and commissions may render such services to the agency within their respective functions as may be requested by the agency.

2. The state commissioner of health and the state department of health are hereby designated to act for and in behalf of the agency in servicing the mortgage loans of the agency, and shall perform such functions and services in connection with the making, servicing and collection of such loans as shall be requested by the agency. The agency shall pay to such department from any monies of the agency available for such purpose, such amounts as are necessary to reimburse such department for the reasonable cost of the services performed by such commissioner and department pursuant to this section.

S 16. Annual report. The agency shall submit to the governor, the chair of the senate finance committee, the chair of the assembly ways and means committee, the comptroller and the director of the budget within one hundred eighty days after the end of its fiscal year, a complete and detailed report setting forth: (1) its operations and accomplishments; (2) its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by the agency for its operating and capital outlay purposes, including a listing of all private consultants engaged by the agency on a contract

basis and a statement of the total amount paid to each such private consultant; (3) its assets and liabilities at the end of its fiscal year, including a schedule of its mortgage loans and commitments and the status of reserve, special or other funds; and (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

S 17. Bond reserve insurance fund. The agency shall create and establish a special fund, to be known as the bond reserve insurance fund and shall pay into such fund all monies appropriated and made available by the state for the purposes of such fund and any other monies which may be made available to the agency for the purposes of such fund from any other source or sources. All monies held in the bond reserve insurance fund shall be used by the agency to meet the agency's obligation to repay principal and interest on its outstanding bonds solely to the extent that all other revenues of the agency available for such purpose are not sufficient to meet such obligations of the agency. Any income or interest earned by, or increment to the bond reserve insurance fund may be used for authorized purposes including, but not limited to, the addition of such income or interest earned, or increment to the monies held in such fund for the purposes herein provided, or the repayment of appropriation expenditures made to the credit of such fund.

S 18. Act not affected if in part unconstitutional. If any section, subdivision, paragraph, sentence, clause or provision of this act shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective and no other section, subdivision, paragraph, sentence, clause or provision shall on account thereof be deemed invalid or ineffective.

S 19. Inconsistent provisions in other laws superseded. Insofar as the provisions of this act are inconsistent with the provisions of any other law, general, special or local, the provisions of this act shall be controlling.

S 2. This act shall take effect immediately.