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

3997

2009-2010 Regular Sessions

I N S E N A T E

April 7, 2009

Introduced by Sen. ESPADA -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law and the public authorities law, in relation to the creation of the insurer fund for underserved neighborhood/rural area development corporation

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

Section 1. The insurance law is amended by adding a new section 1415 to read as follows:

S 1415. INSURER FUND FOR UNDERSERVED NEIGHBORHOOD/RURAL AREA DEVELOPMENT. (A) FOR THE PURPOSES OF THIS SECTION:

(1) "IFUND CORPORATION", "CORPORATION" OR "IFUND" SHALL MEAN THE INSURER FUND FOR UNDERSERVED NEIGHBORHOOD/RURAL AREA DEVELOPMENT CORPORATION;

(2) "QUALIFIED INVESTMENT" SHALL INCLUDE ANY LOAN, THE PURCHASE OF ANY LOAN, THE PURCHASE OF ANY ASSET, THE EXTENSION OF CREDIT AND THE PURCHASES OF EQUITY:

(A) TO OR FROM COMMUNITY DEVELOPMENT CORPORATIONS, NON-PROFIT INTERMEDIARIES QUALIFIED UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE WHICH PACKAGE LOANS AND ADMINISTER LOAN FUNDS AND QUALIFIED COMMUNITY DEVELOPMENT ENTITIES AS DEFINED IN SECTION 450(A) OF THE INTERNAL REVENUE CODE AND REGULATIONS HEREUNDER;

(B) TO FINANCE OR FACILITATE THE FINANCING OF SINGLE- OR MULTI-FAMILY HOUSING AFFORDABLE TO PERSONS OF LOW AND MODERATE INCOME, FAMILY FARMS, SMALL BUSINESSES AND OTHER COMMUNITY DEVELOPMENT ACTIVITIES APPROVED BY THE SUPERINTENDENT THAT REVITALIZE OR STABILIZE UNDERSERVED AREAS, CERTIFIED CAPITAL COMPANIES AS DEFINED IN SECTION ELEVEN OF THE TAX LAW, COMMUNITY SERVICE FACILITIES, INCLUDING CHILD CARE, EDUCATIONAL, HEALTH OR SOCIAL SERVICES TARGETING UNDERSERVED AREAS, THE DEVELOPMENT, ESTABLISHMENT OR OPERATION OF HEALTH INFORMATION TECHNOLOGY, AND THE ENVIRON-

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

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MENTAL CLEANUP OR REDEVELOPMENT OF INDUSTRIAL SITES IN AN UNDERSERVED AREA; AND

(C) IN NEW YORK STATE AND LOCAL GOVERNMENT AGENCY BONDS THAT PRIMARILY BENEFIT UNDERSERVED AREAS IN AN AMOUNT THAT, IN THE AGGREGATE, DOES NOT EXCEED TEN PERCENT OF THE INVESTMENT CAPITAL OF THE CORPORATION;

(3) "LOW AND MODERATE INCOME" SHALL MEAN PERSONS OR FAMILIES WHICH HAVE INCOMES THAT DO NOT EXCEED EIGHTY PERCENT OF THE MEDIAN INCOME FOR THE METROPOLITAN STATISTICAL AREA, IF A PERSON OR FAMILY IS LOCATED IN SUCH AN AREA, OR THE STATEWIDE NONMETROPOLITAN STATISTICAL AREA, IF A PERSON OR FAMILY IS LOCATED OUTSIDE A METROPOLITAN STATISTICAL AREA;

(4) "MEMBER" SHALL MEAN A MEMBER OF THE CORPORATION;

(5) "UNDERSERVED AREAS" SHALL MEAN: (A) AREAS OF THE STATE WHICH QUALIFY AS "DISTRESSED" OR "HIGHLY DISTRESSED" PURSUANT TO THE GENERAL MUNICIPAL LAW; OR (B) AREAS OF THE STATE WITH A MAJORITY OF RESIDENTS OF LOW OR MODERATE INCOME;

(6) "FAMILY FARM" SHALL MEAN A FARM WHICH IS THE PRIMARY SOURCE OF INCOME FOR INDIVIDUALS RESIDING AT THE SAME ADDRESS AND RELATED BY CONSANGUINITY, AFFINITY OR ADOPTION AND WHICH HAS GROSS SALES OF FARM PRODUCTS OF LESS THAN FIVE HUNDRED THOUSAND DOLLARS ANNUALLY;

(7) "SMALL BUSINESSES" SHALL HAVE THE SAME MEANING AS DESCRIBED IN SECTION ONE HUNDRED THIRTY-ONE OF THE ECONOMIC DEVELOPMENT LAW;

(8) "OPERATING EXPENSES" SHALL MEAN THE EXPENSES THE CORPORATION INCURS IN THE ACCOMPLISHMENT OF ITS PURPOSE;

(9) "INVESTMENT CAPITAL" SHALL MEAN THE FUNDS CONTRIBUTED TO THE CORPORATION BY ITS MEMBERS IN ORDER TO MAKE QUALIFIED INVESTMENTS PURSUANT TO ITS PLAN OF OPERATIONS; AND

(10) "HEALTH INFORMATION TECHNOLOGY" SHALL MEAN TECHNOLOGY USED TO: ELECTRONICALLY SHARE PATIENT INFORMATION; IMPROVE CARE COORDINATION; PROMOTE EFFICIENCIES IN THE DELIVERY OF, OR PAYMENT FOR, CARE; OR ENHANCE OUTCOMES, PATIENT SELF-MANAGEMENT AND/OR QUALITY, OR OTHER MEANS OF IMPROVING INTEROPERABILITY AND/OR INTERCONNECTEDNESS OF HEALTH CARE PROVIDERS, CONSUMERS AND/OR PAYERS.

(B)(1) THE INSURER FUND FOR UNDERSERVED NEIGHBORHOOD/RURAL AREA DEVELOPMENT CORPORATION IS HEREBY ESTABLISHED CONSISTING OF ALL INSURERS AUTHORIZED TO WRITE AND ENGAGED IN WRITING, WITHIN THIS STATE, ON A DIRECT BASIS, ANY OF THE TYPES OF INSURANCE DESCRIBED IN PARAGRAPHS ONE THROUGH TEN, TWELVE THROUGH SEVENTEEN AND NINETEEN THROUGH THIRTY OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER. EVERY SUCH INSURER SHALL BE AND SHALL REMAIN A MEMBER OF THE CORPORATION AS A CONDITION OF ITS AUTHORITY TO CONTINUE TO TRANSACT SUCH TYPES OF INSURANCE IN THIS STATE AND SHALL CONTRIBUTE ITS PROPORTIONAL SHARE OF THE INVESTMENT CAPITAL AND OPERATING EXPENSES OF THE CORPORATION.

(2) THE CORPORATION SHALL BE A FOR-PROFIT CORPORATION CONSTITUTING A LEGAL ENTITY SEPARATE AND DISTINCT FROM ITS MEMBERS. ALL FUNDS AND RESERVES OF THE CORPORATION SHALL BE SEPARATELY HELD AND INVESTED. IT SHALL MAINTAIN COMPLETE ACCOUNTS OF ALL MONIES RECEIVED AND ALL LOSSES AND EXPENSES INCURRED IN CONNECTION WITH ITS OPERATIONS.

(3) THE PURPOSE OF THE CORPORATION SHALL BE TO PROMOTE THE ECONOMIC WELFARE AND HEALTH AND WELL-BEING OF THE CITIZENS OF THIS STATE THROUGH QUALIFIED INVESTMENTS IN UNDERSERVED AREAS OF THE STATE.

(C) (1) THE CORPORATION SHALL OPERATE IN ACCORDANCE WITH A PLAN OF OPERATION, WHICH PROVIDES FOR THE ACCOMPLISHMENT OF ITS PURPOSE. ON OR BEFORE APRIL FIRST, TWO THOUSAND TEN, THE CORPORATION SHALL SUBMIT SUCH PLAN OF OPERATIONS FOR APPROVAL BY THE SUPERINTENDENT.

(2) SUCH PLAN SHALL INCLUDE:

(A) A PRELIMINARY ASSESSMENT OF ALL MEMBERS FOR INITIAL OPERATING EXPENSES NECESSARY TO COMMENCE OPERATIONS, ESTABLISH NECESSARY FACILITIES AND MANAGE THE AFFAIRS OF THE CORPORATION;

(B) ONGOING MECHANISMS FOR THE ASSESSMENT AND COLLECTION OF PROPORTIONAL MEMBER CONTRIBUTIONS TOWARDS THE OPERATING EXPENSES AND INVESTMENT CAPITAL OF THE CORPORATION PURSUANT TO PARAGRAPHS THREE AND FOUR OF THIS SUBSECTION AND THE PAYMENT OR DISTRIBUTION OF INCOME ON SUCH INVESTMENTS TO MEMBERS;

(C) A METHOD FOR THE SOLICITATION, REVIEW AND SELECTION OF QUALIFIED INVESTMENTS BY THE CORPORATION WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO:

(I) THE CONVENING OF SIX MEETINGS ANNUALLY IN LOCAL COMMUNITIES,

(II) THE DEVELOPMENT OF AN INFRASTRUCTURE TO EFFECTIVELY DISPERSE AND DEPLOY INVESTMENT CAPITAL THROUGHOUT THE STATE,

(III) THE HIRING OF STAFF TO WORK WITH COMMUNITY GROUPS TO IDENTIFY LOCAL INVESTMENT OPPORTUNITIES, AND

(IV) THE IDENTIFICATION OF UNMET INSURANCE NEEDS IN UNDERSERVED AREAS AND THE DEVELOPMENT OF STRATEGIES TO DELIVER, PROVIDE, DEVELOP, MARKET OR TAILOR INSURANCE PRODUCTS TO MEET THOSE NEEDS THROUGH THE EFFORTS OF THE MEMBERS OF THE CORPORATION;

(D) A PROCESS, SUBJECT TO APPROVAL BY THE SUPERINTENDENT, BY WHICH MEMBERS MAY APPLY FOR AND RECEIVE A CREDIT AGAINST REQUIRED INVESTMENT CAPITAL CONTRIBUTIONS FOR QUALIFIED INVESTMENTS MADE DIRECTLY RATHER THAN THROUGH THE CORPORATION;

(E) ANNUAL GOALS FOR THE COMMITMENT OF A SIGNIFICANT AMOUNT OF INVESTMENT CAPITAL;

(F) A PROCESS, SUBJECT TO APPROVAL BY THE SUPERINTENDENT, UNDER WHICH FOREIGN MEMBERS OF THE CORPORATION MAY APPLY FOR AND RECEIVE A CREDIT AGAINST REQUIRED INVESTMENT CAPITAL CONTRIBUTIONS FOR A QUALIFIED INVESTMENT IT MADE IN ITS STATE OF DOMICILE EITHER DIRECTLY OR THROUGH AN ENTITY FORMED FOR THE PURPOSE OF MAKING QUALIFIED INVESTMENTS;

(G) A MEANS TO PUBLICIZE THE PURPOSE OF THE CORPORATION IN UNDERSERVED AREAS AND AMONG ENTITIES WHICH INVEST IN UNDERSERVED AREAS, AND WITH FEDERAL AND STATE AGENCIES ENGAGED IN AFFORDABLE HOUSING PRODUCTION AND ECONOMIC REVITALIZATION ACTIVITIES; AND

(H) A CORPORATE FISCAL YEAR THAT COMMENCES ON JULY FIRST OF EACH YEAR.

(3) EVERY MEMBER OF THE CORPORATION SHALL PARTICIPATE IN ITS OPERATING EXPENSES IN THE PROPORTION THAT THE NET DIRECT PREMIUMS OF THE MEMBER WRITTEN DURING THE PRECEDING CALENDAR YEAR BEARS TO THE AGGREGATE NET DIRECT PREMIUMS WRITTEN IN THIS STATE BY ALL MEMBERS OF THE CORPORATION. EACH MEMBER'S PARTICIPATION IN THE CORPORATION SHALL BE DETERMINED ANNUALLY ON THE BASIS OF SUCH NET DIRECT PREMIUMS WRITTEN DURING THE PRECEDING CALENDAR YEAR, AS REPORTED IN THE ANNUAL STATEMENTS AND OTHER REPORTS FILED BY THE MEMBER WITH THE SUPERINTENDENT.

(4) (A) FOR THE FISCAL YEAR OF THE CORPORATION BEGINNING JULY FIRST, TWO THOUSAND TEN, EACH MEMBER SHALL CONTRIBUTE TO THE INVESTMENT CAPITAL OF THE CORPORATION AN AMOUNT NOT LESS THAN AN AMOUNT EQUAL TO ONE HUNDRED MILLION DOLLARS MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE CAPITAL AND SURPLUS OR SURPLUS TO POLICYHOLDERS MAINTAINED BY SUCH MEMBER FOR THE PRECEDING CALENDAR YEAR AND THE DENOMINATOR OF WHICH IS THE AGGREGATE CAPITAL AND SURPLUS OR SURPLUS TO POLICYHOLDERS MAINTAINED BY ALL OF THE MEMBERS OF THE CORPORATION FOR THE PRECEDING CALENDAR YEAR.

(B) FOR THE FISCAL YEAR OF SUCH CORPORATION BEGINNING JULY FIRST, TWO THOUSAND ELEVEN, EACH MEMBER SHALL CONTRIBUTE TO THE INVESTMENT CAPITAL OF THE CORPORATION AN AMOUNT NOT LESS THAN TWO HUNDRED FIFTY MILLION

DOLLARS MULTIPLIED BY THE FRACTION DESCRIBED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH. FOR ALL FISCAL YEARS COMMENCING AFTER JULY FIRST, TWO THOUSAND TWELVE, EACH MEMBER SHALL CONTRIBUTE AN AMOUNT NOT LESS THAN THE SAME FRACTION DESCRIBED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH MULTIPLIED BY, AT THE DISCRETION OF THE BOARD OF DIRECTORS OF THE CORPORATION, (I) FIVE HUNDRED MILLION DOLLARS; OR (II) ONE PERCENT OF THE AGGREGATE NET DIRECT PREMIUMS WRITTEN BY ALL OF THE MEMBERS OF THE CORPORATION IN THE PRECEDING CALENDAR YEAR; OR (III) FIVE ONE-HUNDREDTHS OF ONE PERCENT OF THE CAPITAL AND SURPLUS OR SURPLUS TO POLICYHOLDERS OF ALL OF THE MEMBERS OF THE CORPORATION IN THE PRECEDING CALENDAR YEAR. THE CORPORATION MAY REQUEST FROM THE SUPERINTENDENT, AND IF APPROVED BY THE SUPERINTENDENT, MAY ADOPT IN ITS BY-LAWS AND PLAN OF OPERATIONS, STANDARDS WHICH ESTABLISH A MINIMUM AMOUNT OF CAPITAL AND SURPLUS OR SURPLUS TO POLICYHOLDERS FOR PARTICIPATION IN THE CORPORATION. THE SUPERINTENDENT MAY ALSO WAIVE PARTICIPATION FOR AN INSURER OTHERWISE OBLIGATED TO PARTICIPATE AS A MEMBER OF THE CORPORATION, IF THE SUPERINTENDENT DETERMINES THAT THE FINANCIAL CONDITION OF THE INSURER IS SUCH THAT PARTICIPATION IN THE CORPORATION WOULD BE DETRIMENTAL TO THE POLICYHOLDERS OF THE INSURER.

(D) (1) THE CORPORATION SHALL BE GOVERNED BY A BOARD OF SIXTEEN DIRECTORS. THE GOVERNOR, OR HIS OR HER DESIGNEE, THE SPEAKER OF THE ASSEMBLY, OR HIS OR HER DESIGNEE, AND THE TEMPORARY PRESIDENT OF THE SENATE, OR HIS OR HER DESIGNEE, SHALL SERVE AS EX-OFFICIO MEMBERS. EIGHT DIRECTORS, FOUR REPRESENTING INSURERS ENGAGED IN TRANSACTING THE TYPES OF INSURANCE DESCRIBED IN PARAGRAPHS ONE AND TWO OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER AND FOUR REPRESENTING INSURERS ENGAGED IN TRANSACTING OTHER TYPES OF INSURANCE DESCRIBED IN SUCH SUBSECTION, SHALL BE ELECTED BY CUMULATIVE VOTING BY ALL THE MEMBERS OF THE CORPORATION, WHOSE VOTES SHALL BE WEIGHTED IN ACCORDANCE WITH EACH MEMBER'S NET DIRECT PREMIUMS WRITTEN DURING THE PRECEDING CALENDAR YEAR. FIVE DIRECTORS SHALL REPRESENT CONSUMERS AND SHALL HAVE DEMONSTRATED EXPERTISE IN COMMUNITY DEVELOPMENT AND INVESTMENTS. OF THESE FIVE DIRECTORS, ONE SHALL BE APPOINTED BY THE GOVERNOR, TWO SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE AND TWO SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY.

(2) THE DIRECTORS SHALL SERVE WITHOUT COMPENSATION BUT SHALL BE REIMBURSED FOR THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES UNDER THIS ARTICLE.

(E) (1) THE CORPORATION SHALL ANNUALLY FILE A STATEMENT IN THE OFFICE OF THE SUPERINTENDENT AND WITH THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE ON OR BEFORE THE FIRST DAY OF SEPTEMBER. THE STATEMENT SHALL BE IN A FORM APPROVED BY AND CONTAIN INFORMATION PRESCRIBED BY THE SUPERINTENDENT WITH RESPECT TO ITS TRANSACTIONS, CONDITION, OPERATIONS AND AFFAIRS DURING THE PRECEDING YEAR AND SHALL BE MADE AVAILABLE TO THE PUBLIC ELECTRONICALLY AND IN PUBLISHED FORM AT NO COST.

(2) THE SUPERINTENDENT MAY, AT ANY TIME, REQUIRE THE CORPORATION TO FURNISH ADDITIONAL INFORMATION WITH RESPECT TO ITS TRANSACTIONS, CONDITION OR ANY MATTER CONNECTED THEREWITH WHICH HE OR SHE CONSIDERS TO BE MATERIAL AND WHICH WILL ASSIST HIM OR HER IN EVALUATING THE SCOPE, OPERATION AND IMPACT OF THE CORPORATION'S INVESTMENTS AND SHALL PERFORM, OR ARRANGE FOR THE PERFORMANCE OF, AN AUDIT OF THE CORPORATION'S AFFAIRS ON AN ANNUAL BASIS.

S 2. Subdivision 1 of section 2426 of the public authorities law, as amended by chapter 354 of the laws of 1984, is amended to read as follows:

1. "Financial institution". Any bank, trust company, national bank, savings bank, state or federal savings and loan association, or state or federal credit union, insurance company, pension fund or retirement system of any corporation, association, OR any other entity which is owned or controlled by any one or more of the above, provided the same is supervised by or responsible to any agency of the federal government, the state, any department thereof or the governing body of any city, town or village of the state or any other entity approved by the agency or any one or more of the above when lawfully acting as a trustee or otherwise in a fiduciary capacity. The term "financial institution" shall also include the New York state housing finance agency and the New York state urban development corporation, the New York city housing development corporation, the New York city department of housing preservation and development, THE INSURER FUND FOR UNDERSERVED NEIGHBORHOOD/RURAL AREA DEVELOPMENT CORPORATION and any person who is approved as a mortgage lender by the federal housing administration for purposes of insurance issued by such administration or licensed by the state of New York as a mortgage banker.

S 3. The opening paragraph of subdivision 2 of section 2428 of the public authorities law, as amended by chapter 354 of the laws of 1984, is amended to read as follows:

The agency shall limit its insurance on a rehabilitation or preservation loan to an amount not in excess of fifty per centum of the outstanding principal indebtedness, provided, however, that the agency may insure an amount not in excess of seventy-five per centum of the outstanding principal indebtedness of a rehabilitation loan if it shall find, pursuant to rules or regulations which it shall establish that the extent of rehabilitation is sufficient to justify such additional insurance, provided further, however, that the agency may insure an amount equal to the full outstanding principal indebtedness when the loan has been made by a public benefit corporation of the state of New York which public benefit corporation has issued or will issue bonds or notes, some or all of the proceeds of which bonds or notes were used or will be used to make such loan, or when the loan has been made by a public employee pension fund OR WHEN A QUALIFIED INVESTMENT IS MADE BY THE INSURER FUND FOR UNDERSERVED NEIGHBORHOOD/RURAL AREA DEVELOPMENT CORPORATION.

S 4. This act shall take effect immediately.