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

5362

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to authorize the funding of the sanitary sewer system in the hamlet of Hemlock in the town of Livonia

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

Section 1. Legislative findings. It is hereby found and determined that the town board of the town of Livonia, in the county of Livingston, (i) by a resolution adopted on September 4, 1997 pursuant to section 209-d of the town law, established the Hemlock sewer district at the maximum cost not to exceed $2,305,700, (ii) by resolution adopted on January 20, 2005 pursuant to section 202-b of the town law, authorized additional facilities to be included in the Hemlock sewer district, at an additional cost of up to $100,000, and (iii) by a bond resolution adopted on March 21, 2002, as supplemented and amended by a supplemental bond resolution adopted on January 20, 2005 authorized the issuance of serial bonds not to exceed the sum of $2,305,700 for the purpose of financing the sanitary sewer improvements to be included in the Hemlock sewer district.

It is also hereby found and determined that the town issued its serial bonds under the aforesaid bond resolutions and bond anticipation notes in anticipation of the issuance of such serial bonds as follows:

(a) A bond anticipation note dated July 15, 2002 in the amount of $500,000. Such bond anticipation note was renewed by the issuance of a renewal bond anticipation note dated July 17, 2003 in the amount of $500,000. Said renewal bond anticipation note was again renewed by the issuance of a renewal bond anticipation note dated July 16, 2004 in the amount of $500,000. Thereafter, on June 15, 2005, the town issued its $100,000 Public Improvement (Serial) Bonds, Series 2005, for the purpose of refinancing $100,000 principal amount of said outstanding bond anticipation note and the balance of said bond anticipation note was again renewed by the issuance of a renewal bond anticipation note dated July 19, 2005 in the amount of $400,000. Thereafter on June 18, 2006 said

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

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renewal bond anticipation note was retired in full through the application of grant moneys received by the town for such purpose.

(b) A bond anticipation note dated November 8, 2002 in the amount of $450,000. Said bond anticipation note was renewed by the issuance of a renewal bond anticipation note on November 7, 2003 in the amount of $450,000. Said renewal bond anticipation note was again renewed by the issuance of a renewal bond anticipation note dated November 10, 2004 in the amount of $450,000. Thereafter, a principal payment of $15,000 was made on said renewal bond anticipation note and said note was again renewed by the issuance of a renewal bond anticipation note dated November 16, 2005 in the amount of $435,000. Thereafter, a principal payment of $22,500 was made on said renewal bond anticipation note and said note was again renewed by the issuance of a renewal bond anticipation note dated November 14, 2006. Thereafter, a principal payment of $4,100 was made on said renewal bond anticipation note and said note was again renewed by the issuance of a renewal bond anticipation note dated November 13, 2007. Thereafter, a principal payment of $11,000 was made on said renewal bond anticipation note and said note was again renewed by the issuance of a renewal bond anticipation note dated November 13, 2008.

(c) A bond anticipation note dated July 17, 2003 in the amount of $700,000. Said bond anticipation note was renewed by the issuance of a renewal bond anticipation note on July 16, 2004 in the amount of $700,000. Thereafter, pursuant to a resolution of the town board adopted on July 1, 2005, the town advanced moneys from the town's general fund to make a principal payment of $140,000 on said renewal bond anticipation note, which resolution provided that such advance was to be reimbursed out of the proceeds of serial bonds to be subsequently issued by the town, and said note was again renewed by the issuance of a renewal bond anticipation note dated July 19, 2005 in the amount of $560,000. Thereafter, said renewal bond anticipation note was retired in full on June 19, 2006 by the payment of $560,000 out of grant moneys received by the town from the federal and state governments that were intended to be applied to pay costs of improvements included in the Hemlock sewer district.

(d) On September 29, 2005 the town issued its E.F.C. Clean Water Statutory Installment Bonds - 2005 in the principal amount of $618,616 for the intended purposes of (i) refunding in full the aforementioned $100,000 Public Improvement (Serial) Bonds, Series 2005 and (ii) refinancing $518,616 principal amount of the aforementioned $560,000 renewal bond anticipation note dated July 19, 2005. Thereafter, such $518,616 was not so applied to refinance such bond anticipation note dated July 19, 2005 but rather was used to pay a portion of the costs of improvements included in the Hemlock sewer district.

It is also hereby found and determined that the total costs of undertaking the improvements included in the Hemlock sewer district that were paid by the town board of the town were $2,882,000, which amount is in excess of the maximum cost of the said water district authorized by the aforementioned resolution adopted on September 4, 1997.

The legislature further finds and determines that the expenditure by the town on the improvements included in the Hemlock sewer district of an amount in excess of the $2,305,700 maximum cost authorized by the aforesaid resolution adopted on September 4, 1997 was in violation of the provisions of the town law, in that the town board did not, as required by section 209-h of the town law, conduct a public hearing in the manner described in article 12 of the town law, obtain the approval

of such increase in maximum cost by an order of the comptroller of the state of New York as required by section 209-f of the town law, and adopt an order determining that it is in the public interest to authorize the increase of such maximum cost, subject to a permissive referendum in the manner required by subdivision d of section 209-e of the town law.

The legislature further finds and determines that said bond anticipation notes, renewal bond anticipation notes, and statutory installment bonds were issued in violation of the provisions of the local finance law including the provisions of paragraph d of section 23.00 of the local finance law which requires that a portion of any bond anticipation note be redeemed from a source other than the proceeds of bonds within two years of the original date of issue of a bond anticipation note and that a further portion thereof be redeemed prior to the termination of each twelve month period succeeding the date on which the original portion was so redeemed. The legislature also finds and determines that certain of such bond anticipation notes were issued in violation of paragraph b of section 23.00 of the local finance law in that such bond anticipation notes were issued for a period in excess of one year.

S 2. Notwithstanding the defects described in section one of this act, all actions and proceedings undertaken by the town of Livonia, Livingston county, in connection with the proceedings undertaken by the town board under article 12-A of the town law to authorize the establishment of Hemlock sewer district and the payment of costs of the improvements included within the Hemlock sewer district in excess of the maximum cost approved by the town board by the resolution dated September 2, 1997 and all actions and proceedings undertaken by the town of Livonia, Livingston county, in connection with the adoption of the serial bond resolution dated March 21, 2002 authorizing the issuance of serial bonds not to exceed the sum of $2,305,700 for purposes of financing the sanitary sewer improvements included within the Hemlock sewer district and all actions and proceedings in connection with the issuance of bond anticipation notes pursuant thereto as described in section one of this act are hereby legalized, validated, ratified and confirmed. Further, notwithstanding the defects as described in section one of this act in connection with the issuance of said obligations, the town of Livonia is hereby authorized to issue renewal bond anticipation notes and/or serial bonds in an amount not to exceed the sum of $576,000 for the purpose of financing the sewer improvements described herein, including, without limitation, the issuance of serial bonds for the purpose of reborrowing the $140,000 principal payment made on the renewal bond anticipation note dated July 15, 2004 from the town's general fund pursuant to the resolution of the town board, dated July 1, 2005, described in section one of this act.

S 3. Except as otherwise provided in this act, the bonds and bond anticipation notes issued pursuant to this act shall be issued in accordance with the provisions of the local finance law.

S 4. If any clause, sentence, subdivision, paragraph or part of this act be judged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 5. This act shall take effect immediately.