

5562

2009-2010 Regular Sessions

I N S E N A T E

May 18, 2009

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

AN ACT to amend the public health law and the New York state medical care facilities finance agency act, in relation to providing for the refinancing of outstanding indebtedness of, and additional secured borrowing by, certain not-for-profit hospitals

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

1 Section 1. Section 2872 of the public health law is amended by adding
2 a new subdivision 3-b to read as follows:
3 3-B. "ELIGIBLE SECURED HOSPITAL BORROWER". A NOT-FOR-PROFIT HOSPITAL
4 CORPORATION ORGANIZED UNDER THE LAWS OF THIS STATE, WHICH HAS FINANCED
5 OR REFINANCED A PROJECT OR PROJECTS PURSUANT TO FORMER SECTION SEVEN-A
6 OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF NINE-
7 TEEN HUNDRED SEVENTY-THREE AND FOR WHICH SPECIAL HOSPITAL PROJECT BONDS,
8 AS DEFINED IN FORMER PARAGRAPH (D) OF SUBDIVISION THREE OF SECTION THREE
9 OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF NINE-
10 TEEN HUNDRED SEVENTY-THREE, REMAIN OUTSTANDING. IN ADDITION TO BONDS
11 ISSUED FOR REFINANCING AND PURCHASING OUTSTANDING SECURED HOSPITAL
12 BONDS, NEW BORROWING BY THE BROOKDALE HOSPITAL MEDICAL CENTER IS HEREBY
13 APPROVED FOR UP TO EIGHTY MILLION DOLLARS; AND NEW BORROWING BY THE
14 JAMAICA HOSPITAL IS HEREBY APPROVED FOR UP TO EIGHTY MILLION DOLLARS.
15 S 2. The public health law is amended by adding a new section 2874-b
16 to read as follows:
17 S 2874-B. REFINANCING MORTGAGE LOANS AND MAKING SUPPLEMENTAL MORTGAGE
18 LOANS TO ELIGIBLE SECURED HOSPITAL BORROWERS. ELIGIBLE SECURED HOSPITAL
19 BORROWERS, AS DEFINED IN SUBDIVISION THREE-B OF SECTION TWENTY-EIGHT
20 HUNDRED SEVENTY-TWO OF THIS ARTICLE, SHALL BE AUTHORIZED TO REFINANCE
21 ANY MORTGAGE LOAN FINANCED WITH THE PROCEEDS OF SPECIAL HOSPITAL PROJECT
22 BONDS, WHICH LOANS ARE OUTSTANDING AS OF THE EFFECTIVE DATE OF THIS
23 SECTION. FOR PURPOSES OF THIS ARTICLE AND OF SECTION ONE OF CHAPTER

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

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1 THREE HUNDRED NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE,
2 "REFINANCING" SHALL INCLUDE USING THE PROCEEDS OF NEW SPECIAL HOSPITAL
3 PROJECT BONDS TO PURCHASE THE ELIGIBLE SECURED HOSPITAL BORROWER'S
4 OUTSTANDING SPECIAL HOSPITAL PROJECT BONDS, OR TO PURCHASE ANCILLARY
5 FACILITIES FINANCED BY OTHER DEBT OF THE ELIGIBLE SECURED HOSPITAL
6 BORROWER OR A RELATED ENTITY. IN ADDITION, THE MEDICAL CARE FACILITIES
7 FINANCE AGENCY, OR ANY SUCCESSOR THERETO, SHALL MAKE A SUPPLEMENTAL
8 MORTGAGE LOAN, AS DEFINED IN SUBDIVISION TWELVE-A OF SECTION THREE OF
9 SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF NINETEEN
10 HUNDRED SEVENTY-THREE, TO THE BROOKDALE HOSPITAL MEDICAL CENTER AND THE
11 JAMAICA HOSPITAL AS DIRECTED, AND IN AMOUNTS REFLECTED, IN SUBDIVISION
12 THREE-B OF SECTION TWENTY-EIGHT HUNDRED SEVENTY-TWO OF THIS ARTICLE. A
13 MORTGAGE LOAN OR SUPPLEMENTAL MORTGAGE LOAN TO AN ELIGIBLE SECURED
14 HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION THREE-B OF SECTION TWENTY-
15 EIGHT HUNDRED SEVENTY-TWO OF THIS ARTICLE, MADE BY THE MEDICAL CARE
16 FACILITIES FINANCE AGENCY, AND ANY SUCCESSOR THERETO, MAY BE FINANCED OR
17 REFINANCED BY EITHER TAXABLE OR TAX-EXEMPT BONDS, INCLUDING VARIABLE
18 RATE BONDS. THE MEDICAL CARE FACILITIES FINANCE AGENCY, OR ANY SUCCESSOR
19 THERETO, IS AUTHORIZED TO ENTER INTO CONTRACTS FOR INTEREST RATE
20 PROTECTION IN RELATION TO VARIABLE RATE BONDS. AT THE DISCRETION OF THE
21 ELIGIBLE SECURED HOSPITAL BORROWER, THE REFINANCING BONDS MAY HAVE A
22 MATURITY DATE LONGER THAN THE REFINANCED BONDS AND MAY DELAY PRINCIPAL
23 PAYMENTS. TO THE EXTENT THAT A MORTGAGE LOAN OR SUPPLEMENTAL MORTGAGE
24 LOAN IS FINANCED OR REFINANCED BY TAX-EXEMPT BONDS, IT SHALL BE FINANCED
25 OR REFINANCED FOR A TERM NOT LONGER THAN THE TERM SUFFICIENT TO ASSURE
26 THAT THE INTEREST ON REFUNDING BONDS ISSUED TO FINANCE OR REFINANCE THE
27 MORTGAGE LOAN WILL BE EXCLUDABLE FROM GROSS INCOME OF THE HOLDERS THERE-
28 OF FOR FEDERAL TAX PURPOSES, PROVIDED THAT IN NO EVENT SHALL THE TERM OF
29 SUCH FINANCING OR REFINANCING LOAN EXCEED THIRTY YEARS FROM THE DATE OF
30 THE ISSUANCE OF THE TAX-EXEMPT REFUNDING BONDS AND SHALL INCLUDE ALL
31 COSTS ASSOCIATED WITH THE FINANCING OR REFINANCING OF INDEBTEDNESS. ALL
32 FINANCING OR REFINANCING APPLICATIONS BY ELIGIBLE SECURED HOSPITAL
33 BORROWERS SHALL BE APPROVED BY THE ELIGIBLE SECURED HOSPITAL BORROWER'S
34 BOARD. SUCH FINANCING OR REFINANCING APPLICATIONS SHALL INCLUDE ANALYT-
35 ICAL EVIDENCE SUFFICIENT TO DEMONSTRATE THAT THE PROPOSED FINANCING OR
36 REFINANCING IS BEING UNDERTAKEN FOR SOUND BUSINESS PURPOSES AND IN
37 FURTHERANCE OF MAINTAINING OR IMPROVING THE FINANCIAL CONDITION OF THE
38 HOSPITAL. SUCH EVIDENCE MAY INCLUDE BUT IS NOT LIMITED TO: PRESENT VALUE
39 ANALYSIS OF DEBT SERVICE PAYMENTS, INCLUDING WHERE APPLICABLE, PRESENT
40 VALUE ANALYSIS THAT SEGREGATES DEBT SERVICE PAYMENTS BETWEEN PRINCIPAL
41 AND INTEREST COMPONENTS; FINANCIAL PRO FORMAS THAT PROJECT THE BORROW-
42 ER'S REVENUES, EXPENSES AND FINANCIAL POSITION FOR A PERIOD; OR ANY
43 OTHER ANALYSIS OR INFORMATION THE COMMISSIONER DEEMS NECESSARY TO EVALU-
44 ATE THE APPLICATION. THE COMMISSIONER SHALL REQUIRE THE ELIGIBLE SECURED
45 HOSPITAL BORROWER TO GIVE THE DEPARTMENT A WRITTEN UNDERTAKING, ACCEPTA-
46 BLE TO THE COMMISSIONER, THAT IT WILL NOT CLAIM ADDITIONAL REIMBURSEMENT
47 UNDER THE MEDICAL ASSISTANCE PROGRAM AS ESTABLISHED UNDER TITLE ELEVEN
48 OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW DUE TO INTEREST PAYMENTS ON
49 REFINANCING INDEBTEDNESS. ANY SUCH ADDITIONAL INTEREST PAYMENTS ON REFI-
50 NANCED INDEBTEDNESS COVERED BY SUCH WRITTEN UNDERTAKING SHALL NOT BE
51 CONSIDERED AS ALLOWABLE COSTS UNDER THE MEDICAL ASSISTANCE PROGRAM AND
52 SHALL NOT BE INCLUDED IN REIMBURSEMENT RATES OF PAYMENT UNDER ARTICLE
53 TWENTY-EIGHT OF THIS CHAPTER. THE FOREGOING SHALL NOT PRECLUDE THE
54 REIMBURSEMENT OF CAPITAL COSTS ATTRIBUTABLE TO A PROJECT FINANCED BY
55 MEANS OF A SUPPLEMENTAL MORTGAGE LOAN, AS DEFINED IN SUBDIVISION
56 TWELVE-A OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINE-

TY-TWO OF THE LAWS OF NINETEEN SEVENTY-THREE, WHICH SHALL BE REIMBURSED IN A MANNER CONSISTENT WITH THE REIMBURSEMENT OF OTHER CAPITAL COSTS.

S 3. Subdivision 3 of section 3 of section 1 of chapter 392 of the laws of 1973, constituting the New York state medical care facilities finance agency act, is amended by adding a new paragraph (d-1) to read as follows:

(D-1) "SPECIAL HOSPITAL PROJECT BONDS" SHALL MEAN BONDS AND DIRECT LOANS FROM BANKS OR OTHER FINANCIAL INSTITUTIONS, ON A TAXABLE OR TAX-EXEMPT, FIXED OR VARIABLE RATE BASIS, TO THE MEDICAL CARE FACILITIES FINANCE AGENCY, OR ANY SUCCESSOR THERETO, ISSUED PURSUANT TO SECTION SEVEN-C OF THIS ACT FOR THE PURPOSE OF REFINANCING OUTSTANDING MORTGAGE LOANS OR FINANCING SUPPLEMENTAL MORTGAGE LOANS OF ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN SUBDIVISION SIX-C OF THIS SECTION, PURSUANT TO THIS ACT.

S 4. Section 3 of section 1 of chapter 392 of the laws of 1973, constituting the New York state medical care facilities finance agency act, is amended by adding a new subdivision 6-c to read as follows:

6-C. "ELIGIBLE SECURED HOSPITAL BORROWER" SHALL MEAN A NOT-FOR-PROFIT HOSPITAL CORPORATION ORGANIZED UNDER THE LAWS OF THIS STATE, WHICH HAS FINANCED OR REFINANCED A PROJECT OR PROJECTS PURSUANT TO FORMER SECTION SEVEN-A OF THIS ACT, AND FOR WHICH SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN FORMER PARAGRAPH (D) OF SUBDIVISION THREE OF THIS SECTION, REMAIN OUTSTANDING. IN ADDITION TO BONDS ISSUED FOR REFINANCING AND PURCHASING OUTSTANDING SECURED HOSPITAL BONDS, NEW BORROWING BY THE BROOKDALE HOSPITAL MEDICAL CENTER IS HEREBY APPROVED FOR UP TO EIGHTY MILLION DOLLARS; AND NEW BORROWING BY THE JAMAICA HOSPITAL IS HEREBY APPROVED FOR UP TO EIGHTY MILLION DOLLARS.

S 5. Subdivision 10 of section 3 of section 1 of chapter 392 of the laws of 1973, constituting the New York state medical care facilities finance agency act, as separately amended by chapter 803 of the laws of 1984 and chapter 389 of the laws of 1987, is amended to read as follows:

10. "Hospital project" shall mean a specific work or improvement or the refinancing of existing indebtedness which constitutes a lien or encumbrance upon the real property or assets of the eligible borrower, OR THE REFINANCING OF EXISTING INDEBTEDNESS OF AN ELIGIBLE SECURED HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION SIX-C OF THIS SECTION, FOR WHICH SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN FORMER PARAGRAPH (D) OF SUBDIVISION THREE OF THIS SECTION, REMAIN OUTSTANDING whether or not such refinancing is related to the construction, acquisition or rehabilitation of a specified work or improvement undertaken by a non-profit hospital corporation or a non-profit medical corporation, constituting an eligible borrower in accordance with the provisions of article [twenty-eight-B] 28-B of the public health law. The term "hospital project" as used in this subdivision shall also mean a separate work or improvement owned and operated by an eligible borrower to provide such services, functions, capabilities and facilities as may be convenient or desirable for the operation of hospital or other such facility.

S 6. Subdivision 11 of section 3 of section 1 of chapter 392 of the laws of 1973, constituting the New York state medical care facilities finance agency act, is amended to read as follows:

11. "Hospital project cost" shall mean the sum total of all costs incurred by a non-profit hospital corporation or a non-profit medical corporation, constituting an eligible borrower undertaking a project as approved by the commissioner in accordance with the provisions of article [twenty-eight-B] 28-B of the public health law, OR ALL COSTS INCURRED IN CONNECTION WITH THE REFINANCING OF EXISTING INDEBTEDNESS OR

1 ISSUANCE OF NEW INDEBTEDNESS PURSUANT TO SECTION 2874-B OF THE PUBLIC
2 HEALTH LAW.

3 S 7. Subdivision 12 of section 3 of section 1 of chapter 392 of the
4 laws of 1973, constituting the New York state medical care facilities
5 finance agency act, as separately amended by chapter 156 of the laws of
6 1974 and chapter 262 of the laws of 1990, is amended to read as follows:

7 12. "Mortgage loan" shall mean a loan made by the agency to an eligi-
8 ble borrower in an amount not to exceed the total hospital project costs
9 and secured by a first mortgage lien on the real property of which the
10 hospital project consists or on a leasehold on such real property,
11 provided that the term of such leasehold is not less than twenty-five
12 percent longer than the term of the mortgage, and the personal property
13 attached to or used in connection with the construction, acquisition,
14 reconstruction, rehabilitation, improvement or operation of the hospital
15 project. Such loan may be further secured by such a lien upon other real
16 property owned by or on a leasehold on real property of the eligible
17 borrower. Notwithstanding the foregoing provisions of this subdivision
18 or any other provisions of this act to the contrary, any personal prop-
19 erty may be excluded from the lien of the mortgage provided (a) the
20 commissioner [of health] finds that such property is not essential for
21 the rendition of required hospital services as such term is defined in
22 article [twenty-eight] 28 of the public health law, and (b) the agency
23 consents to such exclusion.

24 The term "mortgage loan" shall also mean and include a loan made by
25 the agency to a limited-profit nursing home company in an amount not to
26 exceed ninety-five [percentum] PER CENTUM of the nursing home project
27 cost, or to a non-profit nursing home company in an amount not to exceed
28 the total nursing home project cost, and secured by a first mortgage
29 lien on the real property of which the nursing home project consists or
30 on a leasehold on such real property provided that the term of such
31 leasehold is not less than twenty-five percent longer than the term of
32 the mortgage, and the personal property attached to or used in
33 connection with the construction, acquisition, reconstruction, rehabili-
34 tation, improvement or operation of the nursing home project. Notwith-
35 standing the foregoing provisions of this subdivision or any other
36 provision of this article to the contrary, any personal property may be
37 excluded from the lien of the mortgage provided (a) the commissioner
38 finds that such property is not essential for the nursing home project
39 as such term is defined in article [twenty-eight-A] 28-A of the public
40 health law, and (b) the agency consents to such exclusion. A leasehold
41 under this subdivision shall conform to standards adopted by the agency,
42 with the approval of the division of the budget, that adequately protect
43 the interests of the agency, the state and creditors.

44 THE TERM "MORTGAGE LOAN" SHALL ALSO MEAN AND INCLUDE A LOAN MADE TO AN
45 ELIGIBLE SECURED HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION SIX-C OF
46 THIS SECTION, TO REFINANCE OUTSTANDING INDEBTEDNESS PURSUANT TO THIS
47 ACT. SUCH LOAN MAY BE USED FOR PAYMENT OF TOTAL HOSPITAL PROJECT COSTS,
48 PAYMENTS OF AMOUNTS OUTSTANDING ON EXISTING MORTGAGE LOANS, REPAYMENT OF
49 RESTRUCTURING LOANS, PAYMENT OF OPERATING COSTS ASSOCIATED WITH EXPAN-
50 SION OF CAPACITY TO ADDRESS HOSPITAL CLOSURES, REFINANCING OF CAPITAL
51 EXPENSES INITIALLY FUNDED FROM OPERATIONS, PAYMENT OF ARREARS TO EMPLOY-
52 EE BENEFIT FUNDS, PAYMENT TOWARD PROFESSIONAL LIABILITY PREMIUMS OR
53 UNFUNDED PROFESSIONAL LIABILITIES, PAYMENT OF ACCUMULATED HISTORIC BAD
54 DEBT AND CHARITY CARE LOSSES, PURCHASE OF AN ELIGIBLE SECURED HOSPITAL
55 BORROWER'S OUTSTANDING SPECIAL HOSPITAL PROJECT BONDS, OR PURCHASE OF

1 ANCILLARY FACILITIES FINANCED BY OTHER DEBT OF THE ELIGIBLE SECURED
2 HOSPITAL BORROWER OR A RELATED ENTITY.

3 S 8. Section 3 of section 1 of chapter 392 of the laws of 1973,
4 constituting the New York state medical care facilities finance agency
5 act, is amended by adding a new subdivision 12-a to read as follows:

6 12-A. "SUPPLEMENTAL MORTGAGE LOAN" SHALL MEAN A MORTGAGE LOAN MADE TO
7 AN ELIGIBLE SECURED HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION SIX-C
8 OF THIS SECTION, AFTER THE THIRTY-FIRST DAY OF MARCH, TWO THOUSAND NINE
9 AND IN THE AMOUNTS SET FORTH IN SUBDIVISION SIX-C OF THIS SECTION. SUCH
10 LOAN MAY BE USED FOR PAYMENT OF TOTAL HOSPITAL PROJECT COSTS, PAYMENTS
11 OF AMOUNTS OUTSTANDING ON EXISTING MORTGAGE LOANS, REPAYMENT OF RESTRUC-
12 TURING LOANS, PAYMENT OF OPERATING COSTS ASSOCIATED WITH EXPANSION OF
13 CAPACITY TO ADDRESS HOSPITAL CLOSURES, REFINANCING OF CAPITAL EXPENSES
14 INITIALLY FUNDED FROM OPERATIONS, PAYMENT OF ARREARS TO EMPLOYEE BENEFIT
15 FUNDS, PAYMENT TOWARD PROFESSIONAL LIABILITY PREMIUMS OR UNFUNDED
16 PROFESSIONAL LIABILITIES, PAYMENT OF ACCUMULATED HISTORIC BAD DEBT AND
17 CHARITY CARE LOSSES, PURCHASE OF AN ELIGIBLE SECURED HOSPITAL BORROWER'S
18 OUTSTANDING SPECIAL HOSPITAL PROJECT BONDS, OR PURCHASE OF ANCILLARY
19 FACILITIES FINANCED BY OTHER DEBT OF THE ELIGIBLE SECURED HOSPITAL
20 BORROWER OR A RELATED ENTITY.

21 S 9. Section 5 of section 1 of chapter 392 of the laws of 1973,
22 constituting the New York state medical care facilities finance agency
23 act, is amended by adding a new subdivision 10-d to read as follows:

24 10-D. TO MAKE MORTGAGE LOANS, SUPPLEMENTAL MORTGAGE LOANS AND PROJECT
25 LOANS TO NON-PROFIT HOSPITAL CORPORATIONS AND NON-PROFIT MEDICAL CORPO-
26 RATIONS CONSTITUTING ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN
27 SUBDIVISION SIX-C OF SECTION THREE OF THIS ACT, AND TO UNDERTAKE COMMIT-
28 MENTS TO MAKE ANY SUCH MORTGAGE LOANS, SUPPLEMENTAL MORTGAGE LOANS AND
29 PROJECT LOANS;

30 S 10. Section 1 of chapter 392 of the laws of 1973, constituting the
31 New York state medical care facilities finance agency act, is amended by
32 adding a new section 7-c to read as follows:

33 S 7-C. SECURED HOSPITAL PROJECTS RESERVE FUNDS AND APPROPRIATIONS. 1.
34 SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN PARAGRAPH (D-1) OF SUBDI-
35 VISION THREE OF SECTION THREE OF THIS ACT, ISSUED TO FINANCE OR REFI-
36 NANCE THE PROJECTS OF ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN
37 SUBDIVISION SIX-C OF SECTION THREE OF THIS ACT, SHALL BE SECURED BY (A)
38 A FIRST MORTGAGE LIEN, (B) FUNDS AND ACCOUNTS ESTABLISHED UNDER THE BOND
39 RESOLUTION OR TAXABLE LOAN DOCUMENTS, (C) THE SECURED HOSPITAL SPECIAL
40 DEBT SERVICE RESERVE FUND OR FUNDS, (D) THE SECURED HOSPITAL CAPITAL
41 RESERVE FUND OR FUNDS, AND (E) SUCH SERVICE CONTRACT OR CONTRACTS
42 ENTERED INTO IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION FOUR OF
43 THIS SECTION.

44 2. (A) THE AGENCY SHALL ESTABLISH A SECURED HOSPITAL SPECIAL DEBT
45 SERVICE RESERVE FUND OR FUNDS AND PAY INTO SUCH FUND OR FUNDS MONEYS
46 FROM THE SECURED HOSPITAL FUND UP TO AN AMOUNT NOT TO EXCEED AN AMOUNT
47 NECESSARY TO ENSURE THE REPAYMENT OF PRINCIPAL AND INTEREST DUE ON ANY
48 OUTSTANDING INDEBTEDNESS ON SPECIAL HOSPITAL PROJECTS BONDS, AS DEFINED
49 IN PARAGRAPH (D-1) OF SUBDIVISION THREE OF SECTION THREE OF THIS ACT.

50 FUNDS DEPOSITED IN SUCH SECURED HOSPITAL SPECIAL DEBT SERVICE RESERVE
51 FUND OR FUNDS SHALL BE USED IN THE EVENT THAT AN ELIGIBLE SECURED HOSPI-
52 TAL BORROWER, AS DEFINED IN SUBDIVISION SIX-C OF SECTION THREE OF THIS
53 ACT, FAILS TO MAKE PAYMENTS IN AN AMOUNT SUFFICIENT TO PAY THE REQUIRED
54 DEBT SERVICE PAYMENTS ON SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN
55 PARAGRAPH (D-1) OF SUBDIVISION THREE OF SECTION THREE OF THIS ACT.

1 (B) THE AGENCY SHALL ESTABLISH A SECURED HOSPITAL FUND FOR THE
2 PURPOSES OF PARAGRAPH (A) OF THIS SUBDIVISION AND FOR THE SUPPORT OF
3 ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN SUBDIVISION SIX-C OF
4 SECTION THREE OF THIS ACT, WHICH SECURED HOSPITAL FUND SHALL CONSTITUTE
5 PART OF THE SECURED HOSPITAL FUND CURRENTLY ESTABLISHED AND MAINTAINED
6 BY THE AGENCY, AND SHALL PAY IN SUCH FUND: (I) ALL FUNDS REQUIRED TO BE
7 PAID IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 28 OF THE PUBLIC
8 HEALTH LAW AND REGULATIONS PROMULGATED IN SUCH ARTICLE; (II) ANY MORT-
9 GAGE INSURANCE PREMIUM ASSESSED IN AN AMOUNT FIXED AT THE DISCRETION OF
10 THE AGENCY, UPON THE ISSUANCE OF SPECIAL HOSPITAL PROJECT BONDS, AS
11 DEFINED IN PARAGRAPH (D-1) OF SUBDIVISION THREE OF SECTION THREE OF THIS
12 ACT; (III) ANY INCOME OR INTEREST EARNED ON OTHER RESERVE FUNDS WHICH
13 THE AGENCY ELECTS TO TRANSFER TO THE SECURED HOSPITAL FUND; AND (IV) ANY
14 OTHER MONEYS WHICH MAY BE MADE AVAILABLE TO THE AGENCY FROM ANY OTHER
15 SOURCE OR SOURCES. MONEYS PAID INTO THE SECURED HOSPITAL FUND SHALL, IN
16 THE DISCRETION OF THE AGENCY, BUT SUBJECT TO AGREEMENTS WITH BONDHOLDERS
17 OR OTHER LENDERS, BE USED TO FUND THE SPECIAL DEBT SERVICE RESERVE FUND
18 OR FUNDS AT A LEVEL OR LEVELS WHICH MINIMIZE THE NEED FOR USE OF THE
19 CAPITAL RESERVE FUND OR FUNDS IN THE EVENT OF THE FAILURE OF AN ELIGIBLE
20 SECURED HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION SIX-C OF SECTION
21 THREE OF THIS ACT, TO MAKE THE REQUIRED DEBT SERVICE PAYMENTS ON SPECIAL
22 HOSPITAL PROJECT BONDS, AS DEFINED IN PARAGRAPH (D-1) OF SUBDIVISION
23 THREE OF SECTION THREE OF THIS ACT.

24 (C) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (A) AND (B) OF THIS
25 SUBDIVISION, THE STATE HEREBY EXPRESSLY RESERVES THE RIGHT TO MODIFY OR
26 REPEAL THE PROVISIONS OF ARTICLE 28 OF THE PUBLIC HEALTH LAW.

27 3. THE AGENCY SHALL ESTABLISH A SECURED HOSPITAL CAPITAL RESERVE FUND
28 OR FUNDS WHICH SHALL BE FUNDED AT AN AMOUNT OR AMOUNTS EQUAL TO THE
29 LESSER OF EITHER: (A) THE MAXIMUM AMOUNT OF PRINCIPAL, SINKING FUND
30 PAYMENTS AND INTEREST DUE IN ANY SUCCEEDING YEAR ON OUTSTANDING SPECIAL
31 HOSPITAL PROJECT BONDS, AS DEFINED IN PARAGRAPH (D-1) OF SUBDIVISION
32 THREE OF SECTION THREE OF THIS ACT, OR (B) FOR TAX-EXEMPT BONDS, THE
33 MAXIMUM AMOUNT TO ENSURE THAT SUCH BONDS WILL NOT BE CONSIDERED ARBI-
34 TRAGE BONDS UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED AND FOR
35 TAXABLE BONDS OR DEBT, TEN PERCENT OF THE AMOUNT OF THE BONDS. THE
36 CAPITAL RESERVE FUND SHALL BE FUNDED BY THE SALE OF SPECIAL HOSPITAL
37 PROJECT BONDS, AS DEFINED IN PARAGRAPH (D-1) OF SUBDIVISION THREE OF
38 SECTION THREE OF THIS ACT, OR FROM SUCH OTHER FUNDS AS MAY BE LEGALLY
39 AVAILABLE FOR SUCH PURPOSE, AS PROVIDED FOR IN THE BOND RESOLUTION OR
40 RESOLUTIONS AUTHORIZING THE ISSUANCE OF SUCH BONDS.

41 4. (A) NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL OR SPECIAL LAW TO
42 THE CONTRARY, AND SUBJECT TO THE MAKING OF ANNUAL APPROPRIATIONS THERE-
43 FOR BY THE LEGISLATURE, THE DIRECTOR OF THE BUDGET IS AUTHORIZED IN ANY
44 STATE FISCAL YEAR TO ENTER INTO ONE OR MORE SERVICE CONTRACTS TO SECURE
45 SPECIAL HOSPITAL PROJECT BONDS ISSUED FOR THE BENEFIT OF AN ELIGIBLE
46 SECURED HOSPITAL BORROWER, OR TO SECURE A DIRECT LOAN TO THE MEDICAL
47 CARE FACILITIES FINANCE AGENCY OR ANY SUCCESSOR THERETO FROM A BANK OR
48 OTHER FINANCIAL INSTITUTION, WHICH MAY INCLUDE VARIABLE RATE LOANS AND
49 CONTRACTS THAT PROVIDE LONG TERM INTEREST RATE PROTECTION WHICH MAY, AT
50 THE HOSPITAL'S DISCRETION, BE SECURED IN THE SAME MANNER AS SUCH SPECIAL
51 HOSPITAL PROJECT BONDS. SERVICE CONTRACTS SECURING SPECIAL HOSPITAL
52 PROJECT BONDS ISSUED FOR THE BENEFIT OF AN ELIGIBLE SECURED HOSPITAL
53 BORROWER SHALL NOT EXCEED THE TERM OF THE SPECIAL HOSPITAL PROJECT
54 BONDS, ISSUED FOR THE BENEFIT OF THE ELIGIBLE SECURED HOSPITAL BORROWER,
55 UPON SUCH TERMS AS THE DIRECTOR OF THE BUDGET AND THE AGENCY AGREE, SO
56 AS TO PROVIDE ANNUALLY TO THE AGENCY IN THE AGGREGATE SUCH SUM, IF ANY,

1 AS NECESSARY TO MEET THE DEBT SERVICE PAYMENTS DUE ON OUTSTANDING
2 SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN PARAGRAPH (D-1) OF SUBDI-
3 VISION THREE OF SECTION THREE OF THIS ACT, IN ANY YEAR IF THE FUNDS
4 PROVIDED FOR IN THIS SECTION ARE INADEQUATE.

5 (B) ANY SERVICE CONTRACT ENTERED INTO PURSUANT TO PARAGRAPH (A) OF
6 THIS SUBDIVISION SHALL PROVIDE (I) THAT THE OBLIGATION OF THE DIRECTOR
7 OF THE BUDGET OR OF THE STATE TO FUND OR TO PAY THE AMOUNTS THEREIN
8 PROVIDED FOR SHALL NOT CONSTITUTE A DEBT OF THE STATE WITHIN THE MEANING
9 OF ANY CONSTITUTIONAL OR STATUTORY PROVISION AND SHALL BE DEEMED EXECU-
10 TORY ONLY TO THE EXTENT OF MONEYS AVAILABLE AND THAT NO LIABILITY SHALL
11 BE INCURRED BY THE STATE BEYOND THE MONEYS AVAILABLE FOR SUCH PURPOSE,
12 AND THAT SUCH OBLIGATION IS SUBJECT TO ANNUAL APPROPRIATION BY THE
13 LEGISLATURE; AND (II) THAT THE AMOUNTS PAID TO THE AGENCY PURSUANT TO
14 ANY SUCH CONTRACT MAY BE USED BY IT SOLELY TO PAY OR TO ASSIST IN
15 FINANCING COSTS OF MORTGAGE LOANS OR SUPPLEMENTAL MORTGAGE LOANS TO
16 ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN SUBDIVISION SIX-C OF
17 SECTION THREE OF THIS ACT.

18 5. THE AGENCY SHALL NOT ISSUE SPECIAL HOSPITAL PROJECT BONDS, AS
19 DEFINED IN PARAGRAPH (D-1) OF SUBDIVISION THREE OF SECTION THREE OF THIS
20 ACT, EXCEPT TO REFINANCE MORTGAGE LOANS OR FINANCE SUPPLEMENTAL MORTGAGE
21 LOANS FOR ELIGIBLE SECURED HOSPITAL BORROWERS AS PROVIDED IN SECTION
22 THREE OF THIS ACT.

23 S 11. Notwithstanding any other provision of this act: (i) reimburse-
24 ment for interest on any indebtedness hereunder to be paid by the
25 medical assistance program established under title 11 of article 5 of
26 the social services law shall be subject to the availability of federal
27 financial participation; and (ii) the refinancing of a mortgage loan
28 pursuant to this act shall not alter, affect or change the component of
29 medical assistance reimbursement applicable to the depreciation of any
30 asset or assets.

31 S 12. This act shall take effect immediately.