

S T A T E   O F   N E W   Y O R K

---

5562--B

2009-2010 Regular Sessions

I N   S E N A T E

May 18, 2009

---

Introduced by Sens. HUNTLEY, ADDABBO, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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; and providing for the repeal of certain provisions upon expiration thereof

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 THE FORMER SECTION  
6     SEVEN-A OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS  
7     OF NINETEEN HUNDRED SEVENTY-THREE CONSTITUTING THE NEW YORK STATE  
8     MEDICAL CARE FACILITIES FINANCE AGENCY ACT, AND FOR WHICH SPECIAL HOSPI-  
9     TAL PROJECT BONDS, AS DEFINED IN FORMER PARAGRAPH (D) OF SUBDIVISION  
10    THREE OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED  
11    NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE, REMAIN  
12    OUTSTANDING AND SHALL ALSO INCLUDE, FOR THE PURPOSES OF MAKING SUPPLE-  
13    MENTAL MORTGAGE LOANS AS DEFINED IN SUBDIVISION TWELVE-A OF SECTION  
14    THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF  
15    NINETEEN HUNDRED SEVENTY-THREE, BROOKDALE HOSPITAL MEDICAL CENTER AND  
16    JAMAICA HOSPITAL.

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

LBD11874-10-9

1 S 2. Subdivision 4 of section 2872 of the public health law, as  
2 amended by chapter 389 of the laws of 1987, is amended to read as  
3 follows:

4 4. "Project". "Hospital project". A specific work or improvement,  
5 including lands, buildings, improvements, fixtures and articles of  
6 personal property, acquired, constructed, rehabilitated, owned and oper-  
7 ated by an eligible borrower pursuant to this article, to provide hospi-  
8 tal or other facilities for the prevention, diagnosis or treatment of  
9 human disease, pain, injury, disability, deformity or physical condi-  
10 tion, and for facilities incidental or appurtenant thereto. "Project"  
11 and "Hospital project" shall also mean the refinancing of existing  
12 indebtedness which constitutes a lien or other encumbrance upon the real  
13 property or assets of the eligible borrower whether or not such refi-  
14 nancing is related to the construction, acquisition or rehabilitation of  
15 a specific work or improvement. The term "project" or "hospital project"  
16 as used in this subdivision shall also mean a separate work or improve-  
17 ment, including lands, buildings, fixtures and personal property related  
18 thereto owned and operated by an eligible borrower to provide such  
19 services, functions, capabilities and facilities as may be convenient or  
20 [deisrable] DESIRABLE for the operation of a hospital or other such  
21 facility. THE TERM "PROJECT" OR "HOSPITAL PROJECT", IN THE CASE OF A  
22 SUPPLEMENTAL MORTGAGE LOAN AS DEFINED IN SUBDIVISION TWELVE-A OF SECTION  
23 THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE LAWS OF  
24 NINETEEN HUNDRED SEVENTY-THREE, SHALL ALSO MEAN, IN AN AMOUNT UP TO  
25 EIGHTY MILLION DOLLARS, FOR ANY PURPOSE APPROVED BY THE COMMISSIONER  
26 PURSUANT TO SECTION TWENTY-EIGHT HUNDRED SEVENTY-FOUR-B OF THIS ARTICLE.

27 S 3. The public health law is amended by adding a new section 2874-b  
28 to read as follows:

29 S 2874-B. REFINANCING MORTGAGE LOANS AND MAKING SUPPLEMENTAL MORTGAGE  
30 LOANS TO ELIGIBLE SECURED HOSPITAL BORROWERS. ELIGIBLE SECURED HOSPITAL  
31 BORROWERS, AS DEFINED IN SUBDIVISION THREE-B OF SECTION TWENTY-EIGHT  
32 HUNDRED SEVENTY-TWO OF THIS ARTICLE, SHALL BE AUTHORIZED TO REFINANCE  
33 ANY MORTGAGE LOAN FINANCED WITH THE PROCEEDS OF SPECIAL HOSPITAL PROJECT  
34 BONDS, WHICH LOANS ARE OUTSTANDING AS OF THE EFFECTIVE DATE OF THIS  
35 SECTION AND TO FINANCE SUPPLEMENTAL MORTGAGE LOANS, AS DEFINED IN SUBDI-  
36 VISION TWELVE-A OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED  
37 NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE. A MORTGAGE  
38 LOAN TO AN ELIGIBLE SECURED HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION  
39 THREE-B OF SECTION TWENTY-EIGHT HUNDRED SEVENTY-TWO OF THIS ARTICLE, OR  
40 SUPPLEMENTAL MORTGAGE LOAN, AS DEFINED IN SUBDIVISION TWELVE-A OF  
41 SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF THE  
42 LAWS OF NINETEEN HUNDRED SEVENTY-THREE, MADE BY THE MEDICAL CARE FACILI-  
43 TIES FINANCE AGENCY, AND ANY SUCCESSOR THERETO, MAY BE FINANCED OR REFI-  
44 NANCED FOR A TERM NOT LONGER THAN THE TERM APPROVED BY THE COMMISSIONER  
45 PURSUANT TO THIS SECTION OR IF THE BONDS ISSUED TO FINANCE SUCH MORTGAGE  
46 LOAN OR SUPPLEMENTAL MORTGAGE LOAN ARE ISSUED AS TAX-EXEMPT BONDS, SUCH  
47 SHORTER TERM AS IS NECESSARY TO ASSURE THAT THE INTEREST ON BONDS ISSUED  
48 TO FINANCE OR REFINANCE THE MORTGAGE LOAN WILL BE EXCLUDABLE FROM THE  
49 GROSS INCOME OF THE HOLDERS THEREOF FOR FEDERAL TAX PURPOSES, PROVIDED  
50 THAT IN NO EVENT SHALL THE TERM OF SUCH REFINANCING LOAN EXCEED THIRTY  
51 YEARS FROM THE DATE OF THE ISSUANCE OF THE REFUNDING BONDS AND SHALL  
52 INCLUDE ALL COSTS ASSOCIATED WITH THE FINANCING OR REFINANCING OF  
53 INDEBTEDNESS. ALL FINANCING OR REFINANCING APPLICATIONS BY ELIGIBLE  
54 SECURED HOSPITAL BORROWERS SHALL BE APPROVED BY THE ELIGIBLE SECURED  
55 HOSPITAL BORROWER'S BOARD AND THE COMMISSIONER. SUCH FINANCING OR REFI-  
56 NANCING APPLICATIONS SHALL INCLUDE ANALYTICAL EVIDENCE SUFFICIENT TO

1 DEMONSTRATE THAT THE PROPOSED FINANCING OR REFINANCING IS BEING UNDER-  
2 TAKEN FOR SOUND BUSINESS PURPOSES AND IN FURTHERANCE OF MAINTAINING OR  
3 IMPROVING THE FINANCIAL CONDITION OF THE HOSPITAL. SUCH EVIDENCE MAY  
4 INCLUDE BUT IS NOT LIMITED TO: PRESENT VALUE ANALYSIS OF DEBT SERVICE  
5 PAYMENTS, INCLUDING WHERE APPLICABLE, PRESENT VALUE ANALYSIS THAT SEGRE-  
6 GATES DEBT SERVICE PAYMENTS BETWEEN PRINCIPAL AND INTEREST COMPONENTS;  
7 FINANCIAL PRO FORMAS THAT PROJECT THE BORROWER'S REVENUES, EXPENSES AND  
8 FINANCIAL POSITION FOR A PERIOD DETERMINED BY THE COMMISSIONER; OR ANY  
9 OTHER ANALYSIS OR INFORMATION THE COMMISSIONER DEEMS NECESSARY TO EVALU-  
10 ATE THE APPLICATION AND TO ASSESS THE FINANCIAL ABILITY OF THE ELIGIBLE  
11 SECURED HOSPITAL BORROWER TO REPAY THE MORTGAGE LOAN OR SUPPLEMENTAL  
12 MORTGAGE LOAN ACCORDING TO ITS TERMS. AS A CONDITION OF SUCH PRIOR  
13 APPROVAL, THE COMMISSIONER SHALL APPROVE THE PRINCIPAL AMOUNT OF THE  
14 FINANCING OR REFINANCING LOAN IN THE AMOUNT PROVIDED IN SECTION TWELVE-A  
15 OF SECTION THREE OF SECTION ONE OF CHAPTER THREE HUNDRED NINETY-TWO OF  
16 THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE, AS AMENDED, PROVIDED THAT  
17 SUCH AMOUNT MAY BE REDUCED ONLY TO THE EXTENT THAT GRANT FUNDING IS MADE  
18 AVAILABLE TO THE ELIGIBLE SECURED HOSPITAL BORROWERS THROUGH HEAL NY OR  
19 OTHER PROGRAMS TO FINANCE EMERGENCY ROOM OR OTHER MAJOR CAPITAL PROJECTS  
20 OR OTHER USES PERMITTED UNDER THIS SECTION, AS PROPOSED BY THE ELIGIBLE  
21 HOSPITAL BORROWER, AND THE MAXIMUM TERM THEREOF, AND SHALL REQUIRE THE  
22 ELIGIBLE SECURED HOSPITAL BORROWER TO GIVE THE DEPARTMENT A WRITTEN  
23 UNDERTAKING, ACCEPTABLE TO THE COMMISSIONER, THAT IT WILL NOT CLAIM  
24 ADDITIONAL REIMBURSEMENT UNDER THE MEDICAL ASSISTANCE PROGRAM AS ESTAB-  
25 LISHED UNDER TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW DUE  
26 TO INTEREST PAYMENTS ON REFINANCING INDEBTEDNESS. ANY SUCH ADDITIONAL  
27 INTEREST PAYMENTS ON REFINANCED INDEBTEDNESS COVERED BY SUCH WRITTEN  
28 UNDERTAKING SHALL NOT BE CONSIDERED AS ALLOWABLE COSTS UNDER THE MEDICAL  
29 ASSISTANCE PROGRAM AND SHALL NOT BE INCLUDED IN REIMBURSEMENT RATES OF  
30 PAYMENT UNDER ARTICLE TWENTY-EIGHT OF THIS CHAPTER. THE FOREGOING SHALL  
31 NOT PRECLUDE THE REIMBURSEMENT OF CAPITAL COSTS ATTRIBUTABLE TO A  
32 PROJECT FINANCED BY MEANS OF A SUPPLEMENTAL MORTGAGE LOAN, AS DEFINED IN  
33 SUBDIVISION TWELVE-A OF SECTION THREE OF SECTION ONE OF CHAPTER THREE  
34 HUNDRED NINETY-TWO OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE, WHICH  
35 SHALL BE REIMBURSED IN A MANNER CONSISTENT WITH THE REIMBURSEMENT OF  
36 OTHER CAPITAL COSTS.

37 S 4. Subdivision 3 of section 3 of section 1 of chapter 392 of the  
38 laws of 1973, constituting the New York state medical care facilities  
39 finance agency act, is amended by adding a new paragraph (d-1) to read  
40 as follows:

41 (D-1) "SPECIAL HOSPITAL PROJECT BONDS" SHALL MEAN TAXABLE OR TAX-EX-  
42 EMPT BONDS ISSUED PURSUANT TO SECTION SEVEN-C OF THIS ACT FOR THE  
43 PURPOSE OF REFINANCING OUTSTANDING MORTGAGE LOANS OR FINANCING SUPPLE-  
44 MENTAL MORTGAGE LOANS OF ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED  
45 IN SUBDIVISION SIX-C OF THIS SECTION, PURSUANT TO THIS ACT.

46 S 5. Section 3 of section 1 of chapter 392 of the laws of 1973,  
47 constituting the New York state medical care facilities finance agency  
48 act, is amended by adding a new subdivision 6-c to read as follows:

49 6-C. "ELIGIBLE SECURED HOSPITAL BORROWER" SHALL MEAN A NOT-FOR-PROFIT  
50 HOSPITAL CORPORATION ORGANIZED UNDER THE LAWS OF THIS STATE, WHICH HAS  
51 FINANCED OR REFINANCED A PROJECT OR PROJECTS PURSUANT TO FORMER SECTION  
52 SEVEN-A OF THIS ACT, AND FOR WHICH SPECIAL HOSPITAL PROJECT BONDS, AS  
53 DEFINED IN FORMER PARAGRAPH (D) OF SUBDIVISION THREE OF THIS SECTION,  
54 REMAIN OUTSTANDING AND SHALL ALSO INCLUDE, FOR THE PURPOSES OF MAKING  
55 SUPPLEMENTAL MORTGAGE LOANS AS DEFINED IN SUBDIVISION TWELVE-A OF THIS  
56 SECTION, BROOKDALE HOSPITAL MEDICAL CENTER AND JAMAICA HOSPITAL.

1 S 6. Subdivision 10 of section 3 of section 1 of chapter 392 of the  
2 laws of 1973, constituting the New York state medical care facilities  
3 finance agency act, as amended by chapter 803 of the laws of 1984, is  
4 amended to read as follows:

5 10. "Hospital project" shall mean a specific work or improvement  
6 INCLUDING HOSPITAL PROJECT COSTS FINANCED WITH THE PROCEEDS OF A SUPPLE-  
7 MENTAL MORTGAGE LOAN or the refinancing of existing indebtedness which  
8 constitutes a lien or encumbrance upon the real property or assets of  
9 the eligible borrower, OR THE REFINANCING OF EXISTING INDEBTEDNESS OF AN  
10 ELIGIBLE SECURED HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION SIX-C OF  
11 THIS SECTION, FOR WHICH SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN  
12 FORMER PARAGRAPH (D) OF SUBDIVISION THREE OF THIS SECTION, REMAIN  
13 OUTSTANDING whether or not such refinancing is related to the  
14 construction, acquisition or rehabilitation of a specified work or  
15 improvement undertaken by a non-profit hospital corporation or a non-  
16 profit medical corporation, constituting an eligible borrower in accord-  
17 ance with the provisions of article twenty-eight-B of the public health  
18 law. THE TERM "HOSPITAL PROJECT" AS USED IN THIS SUBDIVISION SHALL ALSO  
19 MEAN A SEPARATE WORK OR IMPROVEMENT OWNED AND OPERATED BY AN ELIGIBLE  
20 BORROWER TO PROVIDE SUCH SERVICES, FUNCTIONS, CAPABILITIES AND FACILI-  
21 TIES AS MAY BE CONVENIENT OR DESIRABLE FOR THE OPERATION OF A HOSPITAL  
22 OR OTHER SUCH FACILITY INCLUDING HOSPITAL PROJECTS, AS DEFINED IN SUBDI-  
23 VISION FOUR OF SECTION TWENTY-EIGHT HUNDRED SEVENTY-TWO OF THE PUBLIC  
24 HEALTH LAW.

25 S 7. Subdivision 11 of section 3 of section 1 of chapter 392 of the  
26 laws of 1973, constituting the New York state medical care facilities  
27 finance agency act, is amended to read as follows:

28 11. "Hospital project cost" shall mean the sum total of all costs  
29 incurred by a non-profit hospital corporation or a non-profit medical  
30 corporation, constituting an eligible borrower undertaking a project as  
31 approved by the commissioner in accordance with the provisions of arti-  
32 cle twenty-eight-B of the public health law, OR, IN THE CASE OF ELIGIBLE  
33 SECURED HOSPITAL BORROWERS, ALL COSTS INCURRED IN CONNECTION WITH THE  
34 REFINANCING OF EXISTING INDEBTEDNESS OR AUTHORIZED TO BE FINANCED UNDER  
35 A SUPPLEMENTAL MORTGAGE LOAN AS APPROVED BY THE COMMISSIONER PURSUANT TO  
36 SECTION TWENTY-EIGHT HUNDRED SEVENTY-FOUR-B OF THE PUBLIC HEALTH LAW.

37 S 8. Subdivision 12 of section 3 of section 1 of chapter 392 of the  
38 laws of 1973, constituting the New York state medical care facilities  
39 finance agency act, as amended by chapter 156 of the laws of 1974, is  
40 amended to read as follows:

41 12. "Mortgage loan" shall mean a loan made by the agency to an eligi-  
42 ble borrower in an amount not to exceed the total hospital project cost  
43 and secured by a first mortgage lien on the real property of which the  
44 hospital project consists and the personal property attached to or used  
45 in connection with the construction, acquisition, reconstruction, reha-  
46 bilitation, improvement or operation of the hospital project. Such loan  
47 may be further secured by such a lien upon other real property owned by  
48 the eligible borrower. Notwithstanding the foregoing provisions of this  
49 subdivision or any other provisions of this act to the contrary, any  
50 personal property may be excluded from the lien of the mortgage provided  
51 (a) the commissioner [of health] finds that such property is not essen-  
52 tial for the rendition of required hospital services as such term is  
53 defined in article twenty-eight of the public health law, and (b) the  
54 agency consents to such exclusion.

55 The term "mortgage loan" shall also mean and include a loan made by  
56 the agency to a limited-profit nursing home company in an amount not to

1 exceed ninety-five [percentum] PER CENTUM of the nursing home project  
2 cost, or to a non-profit nursing home company in an amount not to exceed  
3 the total nursing home project cost, and secured by a first mortgage  
4 lien on the real property of which the nursing home project consists and  
5 the personal property attached to or used in connection with the  
6 construction, acquisition, reconstruction, rehabilitation, improvement  
7 or operation of the nursing home project. Notwithstanding the foregoing  
8 provisions of this subdivision or any other provision of this article to  
9 the contrary, any personal property may be excluded from the lien of the  
10 mortgage provided (a) the commissioner finds that such property is not  
11 essential for the nursing home project as such term is defined in arti-  
12 cle twenty-eight-A of the public health law, and (b) the agency consents  
13 to such exclusion.

14 THE TERM "MORTGAGE LOAN" SHALL ALSO MEAN AND INCLUDE A LOAN MADE TO AN  
15 ELIGIBLE SECURED HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION SIX-C OF  
16 THIS SECTION, TO REFINANCE OUTSTANDING INDEBTEDNESS PURSUANT TO THIS  
17 ACT.

18 S 9. Section 3 of section 1 of chapter 392 of the laws of 1973,  
19 constituting the New York state medical care facilities finance agency  
20 act, is amended by adding a new subdivision 12-a to read as follows:

21 12-A. "SUPPLEMENTAL MORTGAGE LOAN" SHALL MEAN A MORTGAGE LOAN MADE TO  
22 AN ELIGIBLE SECURED HOSPITAL BORROWER, AS DEFINED IN SUBDIVISION SIX-C  
23 OF THIS SECTION, AFTER THE THIRTY-FIRST DAY OF MARCH, TWO THOUSAND NINE  
24 IN AN AMOUNT UP TO EIGHTY MILLION DOLLARS FOR BROOKDALE HOSPITAL MEDICAL  
25 CENTER AND IN AN AMOUNT UP TO EIGHTY MILLION DOLLARS FOR JAMAICA HOSPI-  
26 TAL FOR THE PAYMENT OF HOSPITAL PROJECT COSTS APPROVED BY THE COMMIS-  
27 SIONER PURSUANT TO SECTION TWENTY-EIGHT HUNDRED SEVENTY-FOUR-B OF THE  
28 PUBLIC HEALTH LAW.

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

32 10-D. TO MAKE MORTGAGE LOANS, SUPPLEMENTAL MORTGAGE LOANS AND PROJECT  
33 LOANS TO NON-PROFIT HOSPITAL CORPORATIONS AND NON-PROFIT MEDICAL CORPO-  
34 RATIONS CONSTITUTING ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN  
35 SUBDIVISION SIX-C OF SECTION THREE OF THIS ACT, AND TO UNDERTAKE COMMIT-  
36 MENTS TO MAKE ANY SUCH MORTGAGE LOANS, SUPPLEMENTAL MORTGAGE LOANS AND  
37 PROJECT LOANS;

38 S 11. Section 1 of chapter 392 of the laws of 1973, constituting the  
39 New York state medical care facilities finance agency act, is amended by  
40 adding a new section 7-c to read as follows:

41 S 7-C. SECURED HOSPITAL PROJECTS RESERVE FUNDS AND APPROPRIATIONS. 1.  
42 SPECIAL HOSPITAL PROJECT BONDS, AS DEFINED IN PARAGRAPH (D-1) OF SUBDI-  
43 VISION THREE OF SECTION THREE OF THIS ACT, ISSUED TO REFINANCE THE  
44 PROJECTS OF ELIGIBLE SECURED HOSPITAL BORROWERS, AS DEFINED IN SUBDIVI-  
45 SION SIX-C OF SECTION THREE OF THIS ACT, SHALL BE SECURED BY (A) A MORT-  
46 GAGE LIEN, (B) FUNDS AND ACCOUNTS ESTABLISHED UNDER THE BOND RESOLUTION,  
47 (C) THE SECURED HOSPITAL SPECIAL DEBT SERVICE RESERVE FUND OR FUNDS, (D)  
48 THE SECURED HOSPITAL CAPITAL RESERVE FUND OR FUNDS, AND (E) SUCH SERVICE  
49 CONTRACT OR CONTRACTS ENTERED INTO IN ACCORDANCE WITH THE PROVISIONS OF  
50 SUBDIVISION FOUR OF THIS SECTION.

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

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

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

28 (C) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (A) AND (B) OF THIS  
29 SUBDIVISION, THE STATE HEREBY EXPRESSLY RESERVES THE RIGHT TO MODIFY OR  
30 REPEAL THE PROVISIONS OF ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW.

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

44 4. (A) NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL OR SPECIAL LAW TO  
45 THE CONTRARY, AND SUBJECT TO THE MAKING OF ANNUAL APPROPRIATIONS THERE-  
46 FOR BY THE LEGISLATURE IN ORDER TO REFINANCE MORTGAGE LOANS OR MAKE  
47 SUPPLEMENTAL MORTGAGE LOANS TO ELIGIBLE SECURED HOSPITAL BORROWERS, AS  
48 DEFINED IN SUBDIVISION SIX-C OF SECTION THREE OF THIS ACT, THE DIRECTOR  
49 OF THE BUDGET IS AUTHORIZED IN ANY STATE FISCAL YEAR TO ENTER INTO ONE  
50 OR MORE SERVICE CONTRACTS, WHICH SERVICE CONTRACTS SHALL NOT EXCEED THE  
51 TERM OF THE SPECIAL HOSPITAL PROJECT BONDS, ISSUED FOR THE BENEFIT OF  
52 THE ELIGIBLE SECURED HOSPITAL BORROWER, UPON SUCH TERMS AS THE DIRECTOR  
53 OF THE BUDGET AND THE AGENCY AGREE, SO AS TO PROVIDE ANNUALLY TO THE  
54 AGENCY IN THE AGGREGATE SUCH SUM, IF ANY, AS NECESSARY TO MEET THE DEBT  
55 SERVICE PAYMENTS DUE ON OUTSTANDING SPECIAL HOSPITAL PROJECT BONDS, AS  
56 DEFINED IN PARAGRAPH (D-1) OF SUBDIVISION THREE OF SECTION THREE OF THIS

1 ACT, IN ANY YEAR IF THE FUNDS PROVIDED FOR IN THIS SECTION ARE INADE-  
2 QUATE.

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

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

20 S 12. Notwithstanding any other provision of this act: (i) reimburse-  
21 ment for interest on any indebtedness hereunder to be paid by the  
22 medical assistance program established under title 11 of article 5 of  
23 the social services law shall be subject to the availability of federal  
24 financial participation; and (ii) the refinancing of a mortgage loan  
25 pursuant to this act shall not alter, affect or change the component of  
26 medical assistance reimbursement applicable to the depreciation of any  
27 asset or assets.

28 S 13. The expiration and repeal of sections one through ten of this  
29 act shall not affect or impair any bonds or notes issued, or any loan  
30 made to any borrower, pursuant to the provisions of this act prior to  
31 the expiration of these sections.

32 S 14. This act shall take effect immediately; provided that sections  
33 one through ten of this act shall expire and be deemed repealed Novem-  
34 ber 30, 2010; provided further, that the secured hospital fund estab-  
35 lished by paragraph b of subdivision 2 of section 7-b of the New York  
36 state medical care facilities finance agency act shall not be affected  
37 by such repeal and shall continue in existence.