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

6290

2009-2010 Regular Sessions

I N S E N A T E

November 13, 2009

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

AN ACT to amend the public authorities law, in relation to creating the New York title guaranty authority

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

Section 1. Article 10-D of the public authorities law is amended by adding a new title 4 to read as follows:

TITLE 4

NEW YORK TITLE GUARANTY AUTHORITY

SECTION 3974. SHORT TITLE.
3975. NEW YORK TITLE GUARANTY AUTHORITY.
3976. ADMINISTRATION OF THE AUTHORITY.
3977. GENERAL POWERS OF THE AUTHORITY.
3978. SPECIAL POWERS OF THE AUTHORITY.
3979. NEW YORK TITLE GUARANTY FUND.
3980. PARTICIPATING ATTORNEYS.

S 3974. SHORT TITLE. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE "NEW YORK TITLE GUARANTY AUTHORITY ACT".

S 3975. NEW YORK TITLE GUARANTY AUTHORITY. 1. THERE IS HEREBY CREATED THE NEW YORK TITLE GUARANTY AUTHORITY, TO INITIATE AND OPERATE A PROGRAM WHICH SHALL OFFER GUARANTIES OF REAL PROPERTY TITLES IN THIS STATE. THE AUTHORITY SHALL BE A CORPORATE GOVERNMENTAL AGENCY AND INSTRUMENTALITY OF THE STATE CONSTITUTING A PUBLIC BENEFIT CORPORATION.

2. IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE, THE AUTHORITY MAY ISSUE BONDS ONLY TO FINANCE COSTS, INCLUDING THE FUNDING OF BONDS ISSUED BY THE AUTHORITY TO FINANCE COSTS, AND FUND RESERVES TO SECURE SUCH BONDS.

3. THE AUTHORITY AND ITS CORPORATE EXISTENCE SHALL CONTINUE UNTIL TERMINATED BY LAW, PROVIDED, HOWEVER, THAT NO SUCH TERMINATION SHALL TAKE EFFECT SO LONG AS THE AUTHORITY SHALL HAVE BONDS OR OTHER OBLI-

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

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GATIONS OUTSTANDING UNLESS ADEQUATE PROVISION HAS BEEN MADE FOR THE PAYMENT THEREOF.

S 3976. ADMINISTRATION OF THE AUTHORITY. 1. THE AUTHORITY SHALL BE ADMINISTERED BY SEVEN DIRECTORS APPOINTED BY THE GOVERNOR, OF WHOM TWO MEMBERS SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE AND TWO MEMBERS SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY. THE POWERS AS SET FORTH IN THE BY-LAWS OF THE BOARD SHALL BE ESTABLISHED AND VESTED IN AND BE EXERCISED BY THE MEMBERS OF THE AUTHORITY AT AN INITIAL MEETING DULY CALLED AND HELD AND FOUR MEMBERS SHALL CONSTITUTE A QUORUM.

2. THE MEMBERS OF THE NEW YORK TITLE GUARANTY AUTHORITY BOARD SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES BUT SHALL BE REIMBURSED FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

3. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF ANY GENERAL, SPECIAL OR LOCAL LAW, ORDINANCE, RESOLUTION OR CHARTER, NO OFFICER, MEMBER OR EMPLOYEE OF THE STATE OF NEW YORK, ANY CITY, COUNTY, TOWN OR VILLAGE, ANY GOVERNMENTAL ENTITY OPERATING ANY PUBLIC SCHOOL OR COLLEGE, ANY SCHOOL DISTRICT OR ANY OTHER PUBLIC AGENCY OR INSTRUMENTALITY WHICH EXERCISES GOVERNMENTAL POWERS UNDER THE LAWS OF THE STATE, SHALL FORFEIT HIS OR HER OFFICE OR EMPLOYMENT BY REASON OF HIS OR HER ACCEPTANCE OF APPOINTMENT AS A DIRECTOR, OFFICER OR EMPLOYEE OF THE AUTHORITY, NOR SHALL SERVICE AS SUCH DIRECTOR, OFFICER OR EMPLOYEE OF THE AUTHORITY BE DEEMED INCOMPATIBLE OR IN CONFLICT WITH SUCH OFFICE OR EMPLOYMENT.

4. FOUR DIRECTORS SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY BUSINESS OR THE EXERCISE OF ANY POWER OF THE AUTHORITY. NO ACTION SHALL BE TAKEN BY THE AUTHORITY EXCEPT PURSUANT TO A FAVORABLE VOTE OF AT LEAST FOUR DIRECTORS PARTICIPATING IN A MEETING AT WHICH SUCH ACTION IS TAKEN.

5. THE AUTHORITY SHALL APPOINT A TREASURER AND MAY APPOINT OFFICERS AND AGENTS AS IT MAY REQUIRE AND PRESCRIBE THEIR DUTIES.

S 3977. GENERAL POWERS OF THE AUTHORITY. EXCEPT AS OTHERWISE LIMITED BY THIS TITLE, THE AUTHORITY SHALL HAVE THE FOLLOWING POWERS IN ADDITION TO THOSE SPECIALLY CONFERRED ELSEWHERE IN THIS TITLE, SUBJECT ONLY TO AGREEMENTS WITH BONDHOLDERS:

1. TO SUE AND BE SUED;

2. TO HAVE A SEAL AND ALTER THE SAME AT PLEASURE;

3. TO MAKE AND ALTER BY-LAWS FOR ITS ORGANIZATION AND MANAGEMENT AND, SUBJECT TO AGREEMENTS WITH ITS BONDHOLDERS, TO MAKE AND ALTER RULES AND REGULATIONS GOVERNING THE EXERCISE OF ITS POWERS AND FULFILLMENT OF ITS PURPOSES UNDER THIS TITLE;

4. TO MAKE AND EXECUTE CONTRACTS AND ALL OTHER INSTRUMENTS OR AGREEMENTS NECESSARY OR CONVENIENT TO CARRY OUT ANY POWERS AND FUNCTIONS EXPRESSLY GIVEN IN THIS TITLE;

5. TO COMMENCE ANY ACTION TO PROTECT OR ENFORCE ANY RIGHT CONFERRED UPON IT BY ANY LAW, CONTRACT OR OTHER AGREEMENT;

6. TO BORROW MONEY AND ISSUE BONDS, OR TO REFUND THE SAME, AND TO PROVIDE FOR THE RIGHTS OF THE HOLDERS OF ITS BONDS;

7. AS SECURITY FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON ANY BONDS ISSUED BY IT PURSUANT TO THIS TITLE AND ANY AGREEMENTS MADE IN CONNECTION THEREWITH AND FOR ITS OBLIGATIONS UNDER BOND FACILITIES, TO PLEDGE ALL OR ANY PART OF ITS REVENUES OR ASSETS;

8. TO ACCEPT GIFTS, GRANTS, LOANS OR CONTRIBUTIONS OF FUNDS OR FINANCIAL OR OTHER AID IN ANY FORM FROM THE COUNTY, STATE OR FEDERAL GOVERNMENT OR ANY AGENCY OR INSTRUMENTALITY THEREOF, OR FROM ANY OTHER SOURCE

AND TO EXPEND THE PROCEEDS FOR ANY OF ITS CORPORATE PURPOSES IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE;

9. SUBJECT TO THE PROVISIONS OF ANY CONTRACT WITH BONDHOLDERS, TO INVEST ANY FUNDS HELD IN RESERVES OR SINKING FUNDS, OR ANY FUNDS NOT REQUIRED FOR IMMEDIATE USE OR DISBURSEMENT, AT THE DISCRETION OF THE AUTHORITY, IN (A) OBLIGATIONS OF THE STATE OR THE UNITED STATES GOVERNMENT, (B) OBLIGATIONS THE PRINCIPAL AND INTEREST OF WHICH ARE GUARANTEED BY THE STATE OR THE UNITED STATES GOVERNMENT, (C) CERTIFICATES OF DEPOSIT, WHETHER NEGOTIABLE OR NON-NEGOTIABLE, AND BANKER'S ACCEPTANCES OF ANY OF THE FIFTY LARGEST BANKS IN THE UNITED STATES WHICH BANK, AT THE TIME OF INVESTMENT, HAS AN OUTSTANDING UNSECURED, UNINSURED AND UNGUARANTEED DEBT ISSUE RANKED IN EITHER OF THE TWO HIGHEST RATING CATEGORIES OF TWO NATIONALLY RECOGNIZED INDEPENDENT RATING AGENCIES, (D) COMMERCIAL PAPER OF ANY BANK OR CORPORATION CREATED UNDER THE LAWS OF EITHER THE UNITED STATES OR ANY STATE OF THE UNITED STATES WHICH COMMERCIAL PAPER, AT THE TIME OF THE INVESTMENT, HAS RECEIVED THE HIGHEST RATING OF TWO NATIONALLY RECOGNIZED INDEPENDENT RATING AGENCIES, (E) BONDS, DEBENTURES, OR OTHER EVIDENCES OF INDEBTEDNESS, ISSUED OR GUARANTEED AT THE TIME OF THE INVESTMENT BY THE FEDERAL NATIONAL MORTGAGE ASSOCIATION, FEDERAL HOME LOAN MORTGAGE CORPORATION, STUDENT LOAN MARKETING ASSOCIATION, FEDERAL FARM CREDIT SYSTEM, OR ANY OTHER UNITED STATES GOVERNMENT SPONSORED AGENCY, PROVIDED THAT AT THE TIME OF THE INVESTMENT SUCH AGENCY RECEIVES, OR ITS OBLIGATIONS RECEIVE, ANY OF THE THREE HIGHEST RATING CATEGORIES OF TWO NATIONALLY RECOGNIZED INDEPENDENT RATING AGENCIES, (F) ANY BONDS OR OTHER OBLIGATIONS OF ANY STATE OR THE UNITED STATES OF AMERICA OR OF ANY POLITICAL SUBDIVISION THEREOF OR ANY AGENCY, INSTRUMENTALITY OR LOCAL GOVERNMENTAL UNIT OF ANY SUCH STATE OR POLITICAL SUBDIVISION WHICH BONDS OR OTHER OBLIGATIONS, AT THE TIME OF THE INVESTMENT, HAVE RECEIVED ANY OF THE THREE HIGHEST RATINGS OF TWO NATIONALLY RECOGNIZED INDEPENDENT RATING AGENCIES, (G) ANY REPURCHASE AGREEMENT WITH ANY BANK OR TRUST COMPANY ORGANIZED UNDER THE LAWS OF ANY STATE OF THE UNITED STATES OF AMERICA OR ANY NATIONAL BANKING ASSOCIATION OR GOVERNMENT BOND DEALER REPORTING TO, TRADING WITH, AND RECOGNIZED AS A PRIMARY DEALER BY THE FEDERAL RESERVE BANK OF NEW YORK, WHICH AGREEMENT IS SECURED BY ANY ONE OR MORE OF THE SECURITIES DESCRIBED IN PARAGRAPH (A), (B) OR (E) OF THIS SUBDIVISION WHICH SECURITIES SHALL AT ALL TIMES HAVE A MARKET VALUE OF NOT LESS THAN THE FULL AMOUNT OF THE REPURCHASE AGREEMENT AND BE DELIVERED TO ANOTHER BANK OR TRUST COMPANY ORGANIZED UNDER THE LAWS OF NEW YORK STATE OR ANY NATIONAL BANKING ASSOCIATION DOMICILED IN NEW YORK STATE, AS CUSTODIAN, AND (H) REVERSE REPURCHASE AGREEMENTS WITH ANY BANK OR TRUST COMPANY ORGANIZED UNDER THE LAWS OF ANY STATE OF THE UNITED STATES OF AMERICA OR ANY NATIONAL BANKING ASSOCIATION OR GOVERNMENT BOND DEALER REPORTING TO, TRADING WITH, AND RECOGNIZED AS A PRIMARY DEALER BY THE FEDERAL RESERVE BANK OF NEW YORK, WHICH AGREEMENT IS SECURED BY ANY ONE OR MORE OF THE SECURITIES DESCRIBED IN PARAGRAPH (A), (B) OR (E) OF THIS SUBDIVISION WHICH SECURITIES SHALL AT ALL TIMES HAVE A MARKET VALUE OF NOT LESS THAN THE FULL AMOUNT OF THE REPURCHASE AGREEMENT AND BE DELIVERED TO ANOTHER BANK OR TRUST COMPANY ORGANIZED UNDER THE LAWS OF NEW YORK STATE OR ANY NATIONAL BANKING ASSOCIATION DOMICILED IN NEW YORK STATE, AS CUSTODIAN;

10. TO APPOINT SUCH OFFICERS AND EMPLOYEES AS IT MAY REQUIRE FOR THE PERFORMANCE OF ITS DUTIES AND TO FIX AND DETERMINE THEIR QUALIFICATIONS, DUTIES, AND COMPENSATION, AND TO RETAIN OR EMPLOY COUNSEL, AUDITORS AND PRIVATE FINANCIAL CONSULTANTS AND OTHER SERVICES ON A CONTRACT BASIS OR OTHERWISE FOR RENDERING PROFESSIONAL, BUSINESS OR TECHNICAL SERVICES AND

ADVICE; AND, IN TAKING SUCH ACTIONS, THE AUTHORITY SHALL CONSIDER THE FINANCIAL IMPACT ON THE COUNTY; AND

11. TO DO ANY AND ALL THINGS NECESSARY OR CONVENIENT TO CARRY OUT ITS PURPOSES AND EXERCISE THE POWERS EXPRESSLY GIVEN AND GRANTED IN THIS TITLE; PROVIDED, HOWEVER, SUCH AUTHORITY SHALL UNDER NO CIRCUMSTANCES ACQUIRE, HOLD OR TRANSFER TITLE TO, LEASE, OWN BENEFICIALLY OR OTHERWISE, MANAGE, OPERATE OR OTHERWISE EXERCISE CONTROL OVER ANY REAL PROPERTY, ANY IMPROVEMENT TO REAL PROPERTY OR ANY INTEREST THEREIN OTHER THAN A LEASE OR SUBLEASE OF OFFICE SPACE DEEMED NECESSARY OR DESIRABLE BY THE AUTHORITY.

S 3978. SPECIAL POWERS OF THE AUTHORITY. THE NEW YORK STATE TITLE GUARANTY AUTHORITY BOARD SHALL OFFER GUARANTIES OF REAL PROPERTY TITLES IN THIS STATE. THE TERMS, CONDITIONS AND FORM OF THE GUARANTY CONTRACTS SHALL BE FORMS APPROVED BY THE AUTHORITY. THE AUTHORITY SHALL FIX A CHARGE FOR THE GUARANTY IN AN AMOUNT SUFFICIENT TO PERMIT THE PROGRAM TO OPERATE ON A SELF-SUSTAINING BASIS, INCLUDING PAYMENT OF ADMINISTRATIVE COSTS AND THE MAINTENANCE OF AN ADEQUATE RESERVE AGAINST CLAIMS UNDER THE TITLE GUARANTY PROGRAM.

S 3979. NEW YORK TITLE GUARANTY FUND. 1. A TITLE GUARANTY FUND IS CREATED. FUNDS COLLECTED UNDER THIS PROGRAM SHALL BE PLACED IN THE TITLE GUARANTY FUND AND ARE AVAILABLE TO PAY ALL CLAIMS, NECESSARY RESERVES AND ALL ADMINISTRATIVE COSTS OF THE TITLE GUARANTY PROGRAM. MONEYS IN THE FUND SHALL NOT REVERT TO THE GENERAL FUND AND INTEREST ON THE MONEYS IN THE FUND SHALL REQUIRE COSTS OF TITLE INSURANCE TO BE SUFFICIENT ENOUGH TO INCLUDE FIFTY MILLION DOLLARS ANNUALLY FOR AFFORDABLE HOUSING, FIFTY MILLION DOLLARS ANNUALLY TO ENSURE THAT THE STATE'S ROADS AND BRIDGES ARE IN A STATE OF GOOD REPAIR, FIFTY MILLION DOLLARS ANNUALLY FOR THE PURPOSE OF A STAR REBATE PROGRAM AND OTHER SUCH PURPOSES AS MAY BE REQUIRED BY THE LEGISLATURE AND THE GOVERNOR.

2. A TITLE GUARANTY, CLOSING PROTECTION LETTER, OR GAP COVERAGE ISSUED UNDER THIS PROGRAM IS AN OBLIGATION OF THE AUTHORITY ONLY AND CLAIMS ARE PAYABLE SOLELY AND ONLY OUT OF THE MONEYS, ASSETS, AND REVENUES OF THE TITLE GUARANTY FUND AND ARE NOT AN INDEBTEDNESS OR LIABILITY OF THE STATE. THE STATE IS NOT LIABLE ON ANY GUARANTY, CLOSING PROTECTION LETTER, OR GAP COVERAGE.

3. THE AUTHORITY SHALL CONSULT WITH THE INSURANCE DEPARTMENT IN DEVELOPING A GUARANTY CONTRACT ACCEPTABLE TO THE SECONDARY MARKET AND DEVELOPING ANY OTHER FEATURE OF THE PROGRAM WITH WHICH THE INSURANCE DIVISION MAY HAVE SPECIAL EXPERTISE. THE INSURANCE DEPARTMENT SHALL ESTABLISH THE AMOUNT FOR A LOSS RESERVE FUND. EXCEPT AS PROVIDED IN THIS SECTION, THE TITLE GUARANTY PROGRAM IS NOT SUBJECT TO THE JURISDICTION OF OR REGULATION BY THE INSURANCE DEPARTMENT.

S 3980. PARTICIPATING ATTORNEYS. 1. EACH PARTICIPATING ATTORNEY AND ABSTRACTOR MAY BE REQUIRED TO PAY AN ANNUAL PARTICIPATION FEE TO BE ELIGIBLE TO PARTICIPATE IN THE TITLE GUARANTY PROGRAM. THE FEE, IF ANY, SHALL BE SET BY THE AUTHORITY, SUBJECT TO THE APPROVAL OF THE BOARD.

2. THE PARTICIPATION OF ABSTRACTORS AND ATTORNEYS SHALL BE IN ACCORDANCE WITH RULES ESTABLISHED BY THE BOARD.

A. (1) EACH PARTICIPANT SHALL AT ALL TIMES MAINTAIN LIABILITY COVERAGE IN AMOUNTS APPROVED BY THE AUTHORITY. UPON PAYMENT OF A CLAIM BY THE AUTHORITY THE AUTHORITY SHALL BE SUBROGATED TO THE RIGHTS OF THE CLAIMANT AGAINST ALL PERSONS RELATING TO THE CLAIM.

(2) ADDITIONALLY, EACH PARTICIPATING ABSTRACTOR IS REQUIRED TO OWN OR LEASE, AND MAINTAIN AND USE IN THE PREPARATION OF ABSTRACTS, AN UP-TO-DATE ABSTRACT TITLE PLANT INCLUDING TRACT INDICES FOR REAL ESTATE FOR EACH COUNTY IN WHICH ABSTRACTS ARE PREPARED FOR REAL PROPERTY TITLES

GUARANTEED BY THE DIVISION. THE TRACT INDICES SHALL CONTAIN A REFERENCE TO ALL INSTRUMENTS AFFECTING THE REAL ESTATE WHICH ARE RECORDED IN THE OFFICE OF THE COUNTY RECORDER, AND SHALL COMMENCE NOT LESS THAN FORTY YEARS PRIOR TO THE DATE THE ABSTRACTOR COMMENCES PARTICIPATION IN THE TITLE GUARANTY PROGRAM. HOWEVER, A PARTICIPATING ATTORNEY PROVIDING ABSTRACT SERVICES CONTINUOUSLY FROM NOVEMBER TWELFTH, NINETEEN HUNDRED EIGHTY-SIX, TO THE DATE OF APPLICATION, EITHER PERSONALLY OR THROUGH PERSONS UNDER THE ATTORNEY'S SUPERVISION AND CONTROL IS EXEMPT FROM THE REQUIREMENTS OF THIS SUBPARAGRAPH.

B. THE AUTHORITY MAY WAIVE THE REQUIREMENTS OF THIS SECTION PURSUANT TO AN APPLICATION OF AN ATTORNEY OR ABSTRACTOR WHICH SHOWS THAT THE REQUIREMENTS IMPOSE A HARDSHIP TO THE ATTORNEY OR ABSTRACTOR AND THAT THE WAIVER CLEARLY IS IN THE PUBLIC INTEREST OR IS ABSOLUTELY NECESSARY TO ENSURE AVAILABILITY OF TITLE GUARANTIES THROUGHOUT THE STATE.

3. PRIOR TO THE ISSUANCE OF A TITLE GUARANTY, THE AUTHORITY SHALL REQUIRE EVIDENCE THAT AN ABSTRACT OF TITLE TO THE PROPERTY IN QUESTION HAS BEEN BROUGHT UP-TO-DATE AND CERTIFIED BY A PARTICIPATING ABSTRACTOR IN A FORM APPROVED BY AUTHORITY RULES AND A TITLE OPINION ISSUED BY A PARTICIPATING ATTORNEY IN THE FORM APPROVED IN THE RULES STATING THE ATTORNEY'S OPINION AS TO THE TITLE. THE AUTHORITY SHALL REQUIRE EVIDENCE OF THE ABSTRACT BEING BROUGHT UP-TO-DATE AND THE ABSTRACTOR SHALL RETAIN EVIDENCE OF THE ABSTRACT AS DETERMINED BY THE BOARD.

4. THE ATTORNEY RENDERING A TITLE OPINION SHALL BE AUTHORIZED TO ISSUE A TITLE GUARANTY CERTIFICATE SUBJECT TO THE RULES OF THE AUTHORITY.

S 2. This act shall take effect immediately.