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I N S E N A T E

June 25, 2010

Introduced by Sen. STEWART-COUSINS -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to authorize the city of Newburgh, in the county of Orange, to issue bonds for the purpose of liquidating certain deficits and imposing standards and requirements as to budgetary operations and fiscal management designed to restore such city to fiscal integrity; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Short title. This act shall be known and may be cited as the "city of Newburgh fiscal recovery act".

S 2. Legislative findings. The legislature hereby finds and declares that the fiscal condition of the city of Newburgh has severely deteriorated in recent years as a result of serious local economic and demographic challenges, the city's inability to ensure proper financial accounting procedures, improvident budgeting and taxing practices, and significant turnover in positions responsible for the management of city finances. These factors have led to a substantial structural imbalance between revenues and expenditures, with a projected cumulative deficit of approximately one-quarter of the city's budgeted revenues. The ability of the city to regain fiscal stability is impaired by a recent decline in the city's tax base and continuing weakness in the local economy. These circumstances have caused an independent bond rating service to lower the city's bond rating below investment grade, thereby making the city's ability to access the credit market uncertain.

It is hereby found and declared that the city of Newburgh is in a state of fiscal crisis, and that a combination of enhanced budgetary discipline and short-term budgetary relief is necessary to assist the city in returning to fiscal and economic stability, while ensuring adequate funding for the provision of essential services.

It is hereby acknowledged that a home rule message recommended by the city manager of the city of Newburgh, approved by the city council and endorsed by the mayor of the city, requests the enactment of all of the

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

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provisions of this act as necessary and in the public interest to accomplish the objective of improving market reception for the necessary sale of bonds and other obligations of the city by establishing standards and requirements as to budgetary operations and fiscal management to restore the city to fiscal integrity while retaining the city's right to operate independently as a municipal corporation of the state of New York.

S 3. Exclusivity of act. Based upon the foregoing findings, the legislature through this act hereby imposes on the city certain requirements as to budgetary operations and fiscal management, including the elimination of accumulated deficits of the city, and hereby declares that to the extent the provisions of this act are inconsistent with any general, special or local law, this act shall apply.

S 4. Definitions. As used in this act, the following words and terms shall have the following meanings respectively, unless the text shall indicate another or different meaning or intent:

(a) "Budget" means a current operating budget of the city prepared or adopted pursuant to general, special or local law, being the annual budget and estimate of expenditures to be made during a fiscal year for the general support and current expenses of the government of the city to be paid from taxes or assessments or other current revenues of the city for such year.

(b) "City" means the city of Newburgh, in the county of Orange.

(c) "City comptroller" means the comptroller of the city.

(d) "City council" means the city council of the city.

(e) "City manager" means the city manager of the city.

(f) "City taxes" means and includes all taxes on real property levied and assessed by the city, based on valuation thereof and shall not mean any rent, rate, fee, special assessment or other charge based on benefit or use.

(g) "Collecting officer" means the officer empowered to collect and receive city taxes.

(h) "Deficit bonds" means the bonds authorized to be issued by section five of this act.

(i) "Deficit notes" means bond anticipation notes issued in anticipation of the issuance of deficit bonds.

(j) "Financial plan" means the three-year financial plan required by section eleven of this act.

(k) "Fiscal year" means the fiscal year of the city.

(l) "Mayor" means the mayor of the city.

(m) "Outstanding", when used with respect to obligations of the city as of any particular date, means all obligations of the city theretofore issued and thereupon being issued except any obligation theretofore paid and discharged or for the payment of the principal of and interest on which money is held by or on behalf of the city, in trust solely and in all events only for the purpose and sufficient to pay in full the principal and redemption premium, if any, of and interest on such obligations.

(n) "Special debt service" means, with respect to a fiscal year, the amounts required for the timely payment of (i) all principal due or becoming due and payable in said year with respect to any serial bonds, tax anticipation notes, capital notes or budget notes of the city, and all principal amortization for said year required by law with respect to bond anticipation notes or other securities of the city, and not specifically mentioned in paragraph (ii) of this subdivision, (ii) all interest due or becoming due and payable in said year with respect to any serial bonds, bond anticipation notes, tax anticipation notes, revenue anticipation notes, capital notes, budget notes or other securities of the city not specifically mentioned herein, and (iii) all sinking fund contributions required in said year with respect to any sinking fund bonds.

(o) "Special debt service fund" means the fund which is held by the state comptroller and is described and provided for in section fifteen of this act.

(p) "State aid" means all aid and incentives for municipalities pursuant to section 54 of the state finance law, any successor type of aid and any new aid appropriated by the state as local government assistance for the benefit of the city.

(q) "State comptroller" means the comptroller of the state, pursuant to his or her authority to supervise the accounts of any political subdivision of the state.

Unless the context specifically provides otherwise, any terms used in this act such as revenues, expenditures or expenses shall be construed as such term is construed under applicable accounting principles incorporated in the uniform system of accounts prescribed by the state comptroller.

S 5. Deficit bond and deficit note issuance authorization. The city is hereby authorized to issue bonds, subject to the provisions of this act, on or before December 31, 2011, in an aggregate principal amount not to exceed fifteen million dollars ($15,000,000) (exclusive of the costs and expenses incidental to the issuance of the bonds authorized to be issued by this section) for the specific object or purpose of liquidating actual deficits in its general fund, the special revenue fund, and the capital projects fund existing at the close of its 2010 fiscal year. In anticipation of the issuance of such bonds, deficit notes are hereby authorized to be issued.

S 6. Period of probable usefulness established. It is hereby determined that the financing of the deficits described in section five of this act is an object or purpose of the city for which indebtedness may be incurred, the period of probable usefulness of which is hereby determined to be fifteen years, computed from the date of such deficit bonds or from the date of the first deficit notes, whichever date is earlier. Such deficit bonds and deficit notes shall be general obligations of the city, to which the faith and credit of the city is pledged, and the city shall make an annual appropriation sufficient to pay the principal of and interest on such obligations as the same shall become due.

S 7. Certification of deficit. No deficit bonds may be issued unless and until the state comptroller shall first review and confirm the existence of the deficits described in section five of this act, as well as certify the amount of the deficits. As soon as practicable after the effective date of this act, but in no event prior to the close of the city's 2010 fiscal year, the city shall prepare a report detailing the amount and cause of the deficit and submit to the state comptroller such report, together with the independent audit report for its last completed fiscal year and such other information as the state comptroller may deem necessary. Within thirty days after receiving all necessary reports and information, the state comptroller shall:

(a) perform such reviews as may be necessary;

(b) confirm the existence and certify the amount of the deficits; and

(c) provide notification to the city manager, the city comptroller, the mayor and the city council as to the existence and amount of any such deficits.

S 8. Limit on amount of deficit bonds. Deficit bonds may not be issued in an amount exceeding the amount of such deficits as certified by the state comptroller. If the city issues deficit notes prior to a determination by the state comptroller pursuant to section seven of this act in an amount in excess of the amount of such deficits as confirmed by the state comptroller, the city shall, from funds other than proceeds of bonds or bond anticipation notes, either redeem such deficit notes in the amount by which the amount of such deficit notes exceeds the amount of such deficits as confirmed by the state comptroller or deposit a sum equal to the amount by which such deficit notes exceed the amount of such deficits as confirmed by the state comptroller into the special debt service fund.

S 9. Quarterly budget reports and trial balances. For each fiscal year during the effective period of this act, the city comptroller shall monitor budgets of the city and, for each budget, prepare a quarterly report of summarized budget data depicting overall trends of actual revenues and budget expenditures for the entire budget rather than individual line items. Such reports shall compare revenue estimates and appropriations as set forth in such budget with the actual revenues and expenditures made to date. All quarterly reports shall be accompanied by a recommendation by the city manager setting forth any remedial action necessary to resolve any unfavorable budget variance including the overestimation of revenues and the underestimation of appropriations, and shall be completed within thirty days of the end of each quarter. The city comptroller shall also prepare, as part of such report, a quarterly trial balance of general ledger accounts. The above quarterly budgetary reports and quarterly trial balances shall be prepared in accordance with applicable accounting principles incorporated in the uniform system of accounts prescribed by the state comptroller. These reports shall be submitted to the city manager, the mayor, the city council, the state director of the budget, the state comptroller, the chair of the assembly ways and means committee, and the chair of the senate finance committee.

S 10. Budget review by state comptroller. During the effective period of this act, the city manager shall submit the proposed budget for the next succeeding fiscal year to the state comptroller no later than thirty days before the date scheduled for the city council's vote on the adoption of the final budget or the last date on which the budget may be finally adopted, whichever is sooner. The state comptroller shall examine such proposed budget and make such recommendations as deemed appropriate thereon to the city prior to the adoption of the budget, but no later than ten days before the date scheduled for the city council's vote on the adoption of the final budget or the last date on which the budget must be adopted, whichever is sooner. Such recommendations shall be made after examination into the estimates of revenues and expenditures of the city. The city council, no later than five days prior to the adoption of the budget, shall review any such recommendations and make adjustments to the proposed budget consistent with any recommendations made by the state comptroller.

S 11. Multiyear financial plans. During the effective period of this act, the city manager shall prepare, along with the proposed budget for the next succeeding fiscal year, a three-year financial plan covering the next succeeding fiscal year and the two fiscal years thereafter. The financial plan shall, at a minimum, contain projected employment levels, projected annual expenditures for personal service, fringe benefits, non-personal services and debt service; appropriate reserve fund amounts; estimated annual revenues including projection of property tax rates, the value of the taxable real property and resulting tax levy, annual growth in sales tax and non-property tax revenues; and the proposed use of one-time revenue sources. The financial plan shall also identify actions necessary to achieve and maintain long-term fiscal stability, including, but not limited to, improved management practices, initiatives to minimize or reduce operating expenses, and potential shared services agreements with other municipalities. Within thirty days following the adoption by the city council of the budget for the next succeeding fiscal year and upon the completion of each quarterly budget report pursuant to section nine of this act, the city manager shall update the financial plan consistent with such adopted budget or such quarterly budget report. Copies of the financial plan and any update shall be provided to the city comptroller, the mayor, the city council, the state director of the budget, the state comptroller, the chair of the assembly ways and means committee, and the chair of the senate finance committee.

S 12. State comptroller to comment on further debt issuance. During the effective period of this act, the city comptroller shall notify the state comptroller at least fifteen days prior to the issuance of any bonds or notes or entering into any installment purchase contract, and the state comptroller may review and make recommendations regarding the affordability to the city of any such proposed issuance or contract.

S 13. Private sale of bonds authorized. To facilitate the marketing of (a) deficit bonds, (b) any bonds issued to refund such deficit bonds, and (c) any other bonds to be issued on or before December 31, 2012, the city may, notwithstanding any limitation on the private sales of bonds provided by law and subject to the approval of the state comptroller of the terms and conditions of such sales:

(1) arrange for the underwriting of such bonds at private sale through negotiated fees or by sale of such bonds to an underwriter; or

(2) arrange for the private sale of such bonds through negotiated agreement, with compensation for such sales to be provided by negotiated agreement and/or negotiated fee, if required.

The cost of such underwriting or private placement shall be deemed to be a preliminary cost for purposes of section 11.00 of the local finance law.

S 14. Exceptions to the local finance law. Except as provided in this act, all proceedings in connection with the issuance of such deficit bonds or deficit notes shall be had and taken in accordance with the provisions of the local finance law, provided, however, that any resolution or resolutions authorizing the issuance of such bonds or bond anticipation notes shall not be subject to (a) any mandatory or permissive referendum, (b) the provisions of section 107.00 of the local finance law with respect to any requirements for a down payment and (c) the provisions of section 10.10 of the local finance law.

S 15. Special debt service fund. (a) Upon the issuance of any deficit bonds or deficit notes, the city council shall establish and thereafter maintain a special debt service fund with the state comptroller for the purpose of paying the special debt service due or becoming due in subsequent fiscal years. Such special debt service fund shall be discontinued upon the expiration of the effectiveness of this act, and any balance remaining in the special debt service fund at that time shall be paid by the state comptroller to the city comptroller for use by the city in the manner provided by law.

(b) The state comptroller shall deposit and pay into the special debt service fund any portion of state aid as the state comptroller determines necessary to ensure sufficient moneys are available to make scheduled special debt service payments from the special debt service fund over the succeeding twelve month period taking account of the city's receipt of city taxes and state aid during such twelve month period and the availability of other amounts appropriated or set aside by the city to make such payments. Thereafter, the state comptroller shall, as soon as practicable, pay over the remainder of any such state aid to the city comptroller for use by the city in the manner provided by law.

(c) Not later than the first day of each fiscal year beginning after issuance of any deficit bonds or deficit notes, the city comptroller shall certify to the state comptroller the percentage obtained by dividing the balance obtained by subtracting the amount of the appropriation for such year for a reserve for uncollected taxes from the total amount of city taxes levied and assessed for such year, into the total appropriation in the budget of such year for special debt service, and the percentage so certified shall constitute the debt service percentage for such fiscal year. Immediately upon receipt of any payment during such fiscal year of or on account of any city taxes, the city, its collecting officer and any agent receiving the same shall remit such payment to the state comptroller. Of each sum so received, the state comptroller shall deposit and pay into the special debt service fund the portion thereof equal to the debt service percentage of the total sum, and shall deposit and pay into the fund such additional amounts as the state comptroller determines necessary to ensure sufficient moneys are available to make scheduled special debt service payments from the special debt service fund over the succeeding twelve month period taking account of the timing of the city's receipt of city taxes and state aid during such twelve month period and the availability of other amounts appropriated or set aside by the city to make such payments. Thereafter, the state comptroller shall, as soon as practicable, pay over the remainder of such sum to the city comptroller for use by the city in the manner provided by law.

(d) The moneys in the special debt service fund shall be invested in the manner provided by section 11 of the general municipal law, provided, however, that the investments shall be made for and on behalf of the city by the state comptroller upon instructions from the chief fiscal officer of the city which shall be consistent with the city's investment policy adopted pursuant to section 39 of the general municipal law.

(e) The state comptroller shall from time to time during each fiscal year withdraw from the special debt service fund all amounts required for the payment as the same becomes due of all special debt service of such fiscal year and cause the amounts so withdrawn to be applied to such payments as and when due.

(f) The special debt service fund and all monies or securities therein or payable thereto in accordance with this section is hereby declared to be city property devoted to essential governmental purposes and accordingly, shall not be applied to any purpose other than as provided herein and shall not be subject to any order, judgment, lien, execution, attachment, setoff or counterclaim by any creditor of the city other than a creditor for whose benefit such fund is established and maintained and entitled thereto under and pursuant to this act.

S 16. Agreement with the state. (a) The state does hereby pledge to and agree with the holders of any bonds, notes or other obligations issued by the city during the effective period of this act and secured by such a pledge that the state will not limit, alter or impair the rights hereby vested in the city to fulfill the terms of any agreements made with such holders pursuant to this act, or in any way impair the rights and remedies of such holders or the security for such bonds, notes or other obligations until such bonds, notes or other obligations together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged. The city is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds, notes or other obligations. Nothing contained in this act shall be deemed to (i) obligate the state to make any payments or impose any taxes to satisfy the debt service obligations of the city, (ii) restrict any right of the state to amend, modify, repeal or otherwise alter (A) section 54 of the state finance law or any other provision relating to state aid, or (B) statutes imposing or relating to taxes or fees, or appropriations relating thereto, or (iii) create a debt of the state within the meaning of any constitutional or statutory provisions. The city shall not include in any resolution, contract or agreement with holders of such bonds, notes or other obligations any provision which provides that an event of default occurs as a result of the state exercising its rights described in paragraph (ii) of this subdivision.

(b) Any provision with respect to state aid shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the state beyond the moneys available for that purpose, and any such payment by the state comptroller of state aid shall be subject to annual appropriation of state aid by the state legislature.

S 17. Rights of the state comptroller and bondholders. (a) In the event that the city shall fail to comply with any provision of this act, and such non-compliance shall continue for a period of 30 days, (1) the state comptroller acting alone, or (2) a duly appointed representative of the holders of at least 25 per centum in aggregate principal amount of (i) any series of deficit bonds or deficit notes, (ii) any series of bonds issued to refund such deficit bonds or deficit notes, or (iii) any other series of notes or bonds issued by the city during the effective period of this act, by instrument or instruments filed in the office of the clerk of Orange county and proved or acknowledged in the same manner as a deed to be recorded, may bring an action or commence a proceeding in accordance with the civil practice law and rules to (A) require the city to carry out any of its obligations under this act or (B) enjoin any acts or things which may be unlawful or in violation of the obligations imposed on the city under this act. In addition, the duly appointed representative of the bondholders of any such series of notes or bonds may bring an action or commence a proceeding in accordance with the civil practice law and rules to enforce the rights of the holders of such series of notes or bonds.

(b) The supreme court in the county of Orange shall have jurisdiction of any action or proceeding by the state comptroller or the representative of such bondholders.

S 18. Severability clause. If any clause, sentence, paragraph, section or part of this title shall be adjudged 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, paragraph, section or part involved in the controversy in which such judgment shall have been rendered. The provisions of this act shall be liberally construed to assist the effectuation of the public purposes furthered hereby.

S 19. This act shall take effect immediately; and shall remain in full force and effect until the fifteenth anniversary of the date of first issuance of deficit bonds or deficit notes pursuant to this act, when upon such date the provisions of this act shall be deemed repealed; and provided, however, that the state comptroller shall notify the legislative bill drafting commission upon the occurrence of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.