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

3367

2011-2012 Regular Sessions

I N A S S E M B L Y

January 25, 2011

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Libraries and Education Technology

AN ACT to amend the education law and the state finance law, in relation to establishing a public library revolving loan fund

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

Section 1. The education law is amended by adding a new section 273-b to read as follows:

S 273-B. PUBLIC LIBRARY REVOLVING LOAN PROGRAM. 1. THE COMMISSIONER SHALL ESTABLISH AND MAINTAIN A PUBLIC LIBRARY REVOLVING LOAN PROGRAM TO PROVIDE LOANS TO LIBRARIES AND LIBRARY SYSTEMS FOR THE PURPOSES DESIGNATED IN THIS PART. NOTWITHSTANDING THE PROVISIONS OF ANY LAW TO THE CONTRARY, STATE FINANCIAL ASSISTANCE IN THE FORM OF A LOAN MAY BE PROVIDED FOR UP TO FIFTY PERCENT OF THE APPROVED COSTS (EXCLUDING FEASIBILITY STUDIES, PLANS OR SIMILAR ACTIVITIES) OF ELIGIBLE PROJECTS FOR CAPITAL CONSTRUCTION BY AN ELIGIBLE PUBLIC, FREE ASSOCIATION OR INDIAN LIBRARY, OR BY A PUBLIC, SCHOOL OR REFERENCE AND RESEARCH LIBRARY RESOURCE SYSTEM, AS PROVIDED IN THIS SECTION. IN AREAS OF HIGH NEED, AS DEFINED IN REGULATIONS PROMULGATED BY THE COMMISSIONER PURSUANT TO SUBDIVISION ELEVEN OF THIS SECTION, A LOAN OF UP TO SEVENTY-FIVE PERCENT OF APPROVED COSTS (EXCLUDING FEASIBILITY STUDIES, PLANS OR SIMILAR ACTIVITIES) MAY BE APPROVED BY THE COMMISSIONER. A LIBRARY OR LIBRARY SYSTEM MAY SUBMIT AN APPLICATION FOR STATE FINANCIAL ASSISTANCE FOR ELIGIBLE PROJECTS AS PROVIDED IN THIS SECTION.

2. THE COMMISSIONER, AFTER REVIEW OF THE PROGRAMMATIC AND FISCAL NEEDS AND RESOURCES OF THE PROJECT AND THE LIBRARY OR LIBRARY SYSTEM, SHALL MAKE A DETERMINATION, SUBJECT TO THE RESTRICTIONS, LIMITATIONS, RESPONSIBILITIES AND REQUIREMENTS OF THIS SECTION, AS TO THE AMOUNT OF STATE FINANCIAL ASSISTANCE THAT THE LIBRARY OR LIBRARY SYSTEM MAY RECEIVE FOR ANY AMOUNT UP TO AND INCLUDING THE AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS. ANY FINANCIAL ASSISTANCE MAY BE PROVIDED FROM THE PUBLIC

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

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LIBRARY REVOLVING LOAN FUND ESTABLISHED PURSUANT TO SECTION NINETY-ONE-H OF THE STATE FINANCE LAW. INTEREST IN ANY SUCH LOAN SHALL BE SET AT TWO POINTS BELOW THE PRIME RATE. ELIGIBLE PROJECTS SHALL INCLUDE:

A. CONSTRUCTION OF A NEW FACILITY FOR LIBRARY PURPOSES;

B. IMPROVEMENT, EXPANSION OR REHABILITATION OF A BUILDING FOR LIBRARY PURPOSES;

C. IMPROVEMENT, EXPANSION OR REHABILITATION OF EXISTING BUILDING OR BUILDINGS TO PROVIDE FOR HANDICAPPED ACCESSIBILITY;

D. SUCH OTHER PROJECTS OF SUBSTANTIVE CHARACTER AS ARE IN KEEPING WITH THE SPIRIT AND INTENT OF THIS SECTION.

NO PROJECT SHALL BE CONSIDERED ELIGIBLE IF IT IS APPROVED FOR FINANCING FROM ANY OTHER STATE ASSISTANCE PROGRAM, EXCEPTING AID FOR LIBRARY CONSTRUCTION AWARDED PURSUANT TO SECTION TWO HUNDRED SEVENTY-THREE-A OF THIS ARTICLE.

3. EACH APPLICATION FOR FINANCIAL ASSISTANCE SHALL BE SUBMITTED TO THE COMMISSIONER BY THE BOARD OF TRUSTEES OF THE LIBRARY OR LIBRARY SYSTEM. EACH APPLICATION SHALL:

A. DEMONSTRATE THAT ADEQUATE OPERATING SUPPORT AND RESOURCES WILL BE AVAILABLE AT THE COMPLETION OF THE PROJECT TO PROVIDE AN IMPROVED OR INCREASED LEVEL OF SERVICE;

B. CONTAIN VERIFICATION IN SUCH FORM AS MAY BE ACCEPTABLE TO THE COMMISSIONER THAT THE REMAINING COST OF THE PROJECT, EXCLUSIVE OF STATE FINANCIAL ASSISTANCE, HAS BEEN OR WILL BE OBTAINED;

C. DEMONSTRATE THAT THE PROJECT WILL BE COMPLETED PROMPTLY AND IN ACCORDANCE WITH THE APPLICATION;

D. EITHER DEMONSTRATE THAT THE OPERATION OF THE ORGANIZATION WILL BE MADE MORE ECONOMICAL OR EFFICIENT AS A CONSEQUENCE OF APPROVAL OR DEMONSTRATE THAT HEALTH AND SAFETY CONCERNS WILL BE REPAIRED OR ACCESS TO HANDICAPPED PROVIDED;

E. DEMONSTRATE THAT THE PROJECT WILL BE CONDUCTED IN ACCORDANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS;

F. DEMONSTRATE THAT, WHERE APPROPRIATE, COMPETITIVE BIDDING PROCEDURES WILL BE FOLLOWED AS REQUIRED BY LAW, OR PROVIDE SUCH OTHER EVIDENCE OF COMPETITION AS SHALL BE SATISFACTORY TO THE COMMISSIONER;

G. PROVIDE AN ASSESSMENT OF THE USEFUL LIFE OF THE PROJECT, AND SUCH RECOMMENDATION, ANALYSIS OF NEEDS OR FEASIBILITY STUDIES AS MAY BE REQUIRED BY THE COMMISSIONER PROVIDED, HOWEVER, THAT FOR THE PURPOSES OF THIS SECTION THE TERM "USEFUL LIFE" SHALL MEAN SUCH METHOD OF CALCULATING THE WORTH OF A PROJECT AND THE AMOUNT OF ANNUAL DEPRECIATION NECESSARY FOR EFFECTING CONTRACTS UNDER THIS SECTION AS THE COMMISSIONER SHALL REQUIRE AFTER CONSULTATION WITH THE STATE COMPTROLLER AND UPON APPROVAL BY THE STATE DIVISION OF THE BUDGET;

H. DEMONSTRATE THAT THE PROJECT WILL COMPLY WITH THE REQUIREMENT OF ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW RELATING TO THE PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN;

I. PROVIDE SUCH OTHER INFORMATION AS MAY BE REQUIRED BY THE COMMISSIONER.

4. EACH LIBRARY OR LIBRARY SYSTEM MAY SUBMIT NO MORE THAN ONE APPLICATION ANNUALLY. ANY OTHER PROVISION OF THIS SECTION TO THE CONTRARY NOTWITHSTANDING, NO LIBRARY OUTLET SHALL RECEIVE STATE FINANCIAL ASSISTANCE UNDER THIS SECTION FOR MORE THAN ONE YEAR IN ANY CONSECUTIVE THREE-YEAR PERIOD.

5. ANY OTHER PROVISION OF LAW OR OF THIS SECTION TO THE CONTRARY NOTWITHSTANDING, STATE FINANCIAL ASSISTANCE SHALL NOT BE PROVIDED PURSUANT TO THIS SECTION UNTIL THE COMMISSIONER HAS:

A. CONSIDERED THE USEFUL LIFE OF THE ELIGIBLE PROJECT AS SUCH TERM IS DEFINED IN PARAGRAPH G OF SUBDIVISION THREE OF THIS SECTION;

B. DETERMINED THE AMOUNT OF STATE FINANCIAL ASSISTANCE TO BE PROVIDED; AND

C. EXECUTED AN AGREEMENT TO PROVIDE SUCH ASSISTANCE. SUCH AGREEMENT SHALL BE EXECUTED BY THE COMMISSIONER AND THE LIBRARY OR LIBRARY SYSTEM. ANY SUCH AGREEMENT SHALL PROVIDE FOR THE CREATION OF A LIEN OR OTHER SECURITY INTEREST OR SUCH OTHER GUARANTEE AS SHALL BE SATISFACTORY TO THE COMMISSIONER TO ASSURE REPAYMENT OF FINANCIAL ASSISTANCE PROVIDED UNDER THIS SECTION. SUCH AGREEMENT SHALL ASSURE THAT THE LENGTH OF A LOAN SHALL NOT EXCEED THE USEFUL LIFE OF THE PROJECT AND SHALL INCLUDE, IN ADDITION TO SUCH OTHER PROVISIONS AS THE COUNCIL MAY REQUIRE, THE FOLLOWING:

(I) THE AMOUNT OF FINANCIAL ASSISTANCE, THE TERMS AND CONDITIONS UPON WHICH IT IS PROVIDED, THE USEFUL LIFE OF THE ELIGIBLE PROJECT AND THE METHOD OF DEPRECIATING THE ELIGIBLE PROJECT FOR PURPOSES OF THE REPAYMENT PROVISIONS OF THE AGREEMENT;

(II) A REQUIREMENT THAT, UPON A FINDING BY THE COMMISSIONER THAT A PROJECT HAS NOT BEEN COMPLETED, OR HAS NOT BEEN COMPLETED IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT, THE OUTSTANDING BALANCE OF FINANCIAL ASSISTANCE PROVIDED IN THE FORM OF A LOAN SHALL BE REPAID TO THE COMMISSIONER BY THE GUARANTOR, PROVIDED THAT UPON A SHOWING OF GOOD CAUSE BY THE ORGANIZATION THE COMMISSIONER SHALL GRANT AN EXTENSION OF UP TO NINETY DAYS FROM THE DATE OF SUCH FINDING TO ALLOW THE LIBRARY OR LIBRARY SYSTEM TO COMPLETE THE PROJECT IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT, AND FURTHER PROVIDED THAT THE COMMISSIONER SHALL PROVIDE NO MORE THAN TWO SUCH EXTENSIONS FROM THE DATE OF SUCH FINDING TO ALLOW THE LIBRARY OR LIBRARY SYSTEM TO COMPLETE THE PROJECT IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT.

6. IN ANY CASE IN WHICH STATE FINANCIAL ASSISTANCE IS PROVIDED THE FOLLOWING SHALL BE INCLUDED IN THE AGREEMENT: A REQUIREMENT THAT THE LIBRARY OR LIBRARY SYSTEM SHALL OBTAIN, IN ADDITION TO SUCH OTHER SECURITY AS MAY BE REQUIRED BY THE COMMISSIONER OR BY OTHER PROVISIONS OF LAW, AN UNDERTAKING OR SURETY BOND FROM ANY PERSON OR ENTITY WHICH HAS CONTRACTED TO PERFORM WORK ON AN APPROVED PROJECT TO ASSURE THE FAITHFUL PERFORMANCE OF SUCH PROJECT AND/OR A LABOR AND/OR MATERIAL BOND AS MAY BE APPROPRIATE.

7. ANY LIEN, SECURITY INTEREST OR GUARANTEE ESTABLISHED CREATED UNDER THE PROVISIONS OF SUBDIVISION FIVE OR SIX OF THIS SECTION SHALL BE IN ADDITION TO ANY OTHER RIGHTS OR OBLIGATIONS OF THE COMMISSIONER UNDER THE PROVISIONS OF THE LIEN LAW OR ANY OTHER LAW.

8. THE COMMISSIONER SHALL CAUSE TO BE FILED AND TO BE RECORDED IN THE OFFICE OF THE COUNTY CLERK IN THE COUNTY WHERE THE SUBJECT PROPERTY IS SITUATED ANY LIEN OR OTHER SECURITY INTEREST AS MAY BE REQUIRED TO ASSURE REPAYMENT OF FINANCIAL ASSISTANCE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. THE DEPARTMENT OF LAW SHALL PROVIDE SUCH ASSISTANCE AS THE COMMISSIONER MAY REQUIRE TO CREATE AND PERFECT ANY SUCH LIENS OR OTHER SECURITY INTERESTS.

9. IN APPROVING APPLICATIONS PURSUANT TO THIS SECTION, THE COMMISSIONER SHALL SEEK TO INSURE THAT SIXTY PERCENT OF THE FUNDS APPROPRIATED PURSUANT TO THIS SECTION SHALL BE MADE AVAILABLE IN SUCH A MANNER AS TO INSURE THAT THE RATIO OF THE AMOUNT RECEIVED WITHIN EACH PUBLIC LIBRARY SYSTEM TO THE WHOLE OF THE FINANCIAL ASSISTANCE MADE AVAILABLE PURSUANT TO THIS SUBDIVISION IS NO GREATER THAN THE RATIO OF THE POPULATION OF SUCH PUBLIC LIBRARY SYSTEM TO THE POPULATION OF THE STATE. ANY FUNDS MADE AVAILABLE PURSUANT TO THIS SECTION WHICH, BY DECEMBER THIRTY-FIRST

OF THE YEAR IN WHICH THIS SECTION SHALL HAVE BECOME A LAW, AND OCTOBER THIRTY-FIRST OF EACH YEAR THEREAFTER, ARE DECLINED BY OR WHICH CANNOT BE USED BY SUCH LIBRARIES OR LIBRARY SYSTEMS, AS DETERMINED BY THE COMMISSIONER, SHALL BE MADE AVAILABLE TO OTHER ELIGIBLE LIBRARIES OR LIBRARY SYSTEMS FOR ELIGIBLE PROJECTS.

10. IN THE EVENT AN ELIGIBLE LIBRARY OR LIBRARY SYSTEM FAILS TO MAKE A PAYMENT ON A LOAN OR FAILS TO MAKE ANY OTHER PAYMENT REQUIRED UNDER THE PROVISIONS OF THIS SECTION, THE COMMISSIONER SHALL INFORM THE COMPTROLLER OF SUCH FAILURE AND OF THE AMOUNT OVERDUE, WHICH AMOUNT THE COMPTROLLER MAY RECOVER FROM ANY PAYMENTS DUE FROM THE STATE TO THE ELIGIBLE ORGANIZATION, INCLUDING LOCAL ASSISTANCE PAYMENTS.

11. THE COMMISSIONER SHALL ADOPT GUIDELINES WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, AND SHALL PROMULGATE RULES AND REGULATIONS NOT LATER THAN SEPTEMBER FIRST, TWO THOUSAND ELEVEN AS ARE NECESSARY TO CARRY OUT THE PURPOSES AND PROVISIONS OF THIS SECTION. IN ADDITION TO ANY OTHER REQUIREMENTS SET FORTH BY THIS SECTION, THE COMMISSIONER SHALL ESTABLISH PROCEDURES FOR THE RECOUPMENT OF FINANCIAL ASSISTANCE PROVIDED IN THE EVENT THAT A PROJECT IS NOT COMPLETED OR NOT COMPLETED AS PROPOSED BY THE APPLICANT LIBRARY OR LIBRARY SYSTEM. COPIES OF SUCH RULES AND REGULATIONS SHALL BE PROVIDED AT LEAST SIXTY DAYS PRIOR TO THE TIME THEY SHALL BE EFFECTIVE TO THE SENATE FINANCE COMMITTEE AND THE ASSEMBLY WAYS AND MEANS COMMITTEE.

12. THE COMMISSIONER SHALL REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE CHAIRS OF THE SENATE FINANCE COMMITTEE AND ASSEMBLY WAYS AND MEANS COMMITTEE NOT LATER THAN JANUARY FIFTEENTH OF EACH YEAR CONCERNING THE AMOUNTS APPROPRIATED AND EXPENDED PURSUANT TO THIS SECTION, THE NUMBER OF APPLICATIONS RECEIVED, THE TOTAL AMOUNT OF FINANCIAL ASSISTANCE REQUESTED, THE TOTAL NUMBER OF APPLICATIONS FUNDED, THE AMOUNT OF FUNDING PROVIDED, AND SUCH OTHER INFORMATION AS THE CHAIR SHALL DEEM APPROPRIATE, INCLUDING ANY RECOMMENDATIONS FOR PROGRAM IMPROVEMENT, RECOMMENDATIONS FOR INCREASING THE TOTAL AMOUNT OF FUNDING FROM STATE AND NON-STATE SOURCES AVAILABLE TO INCREASE TOTAL FUNDS FOR PROJECTS AVAILABLE TO THE LIBRARIES AND LIBRARY SYSTEMS OF THIS STATE, IN PARTICULAR FOR RURAL AND MINORITY COMMUNITIES, AND IDENTIFICATION OF AND PROPOSALS FOR REMOVING BARRIERS OR LIMITS FACED BY COMMUNITIES IN ACCESSING THE PROGRAM OR IN MAXIMIZING USE OF FUNDS PROVIDED HEREUNDER.

S 2. The state finance law is amended by adding a new section 91-h to read as follows:

S 91-H. PUBLIC LIBRARY REVOLVING LOAN FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE "PUBLIC LIBRARY REVOLVING LOAN FUND".

2. THE PUBLIC LIBRARY REVOLVING LOAN FUND SHALL CONSIST OF ALL MONIES APPROPRIATED, CREDITED, OR TRANSFERRED THERETO FROM THE GENERAL FUND OR ANY OTHER SOURCE PURSUANT TO LAW, INCLUDING THE REPAYMENT OF LOANS PROVIDED TO MUNICIPALITIES PURSUANT TO SECTION TWO HUNDRED SEVENTY-THREE-B OF THE EDUCATION LAW.

S 3. This act shall take effect July 1, 2011.