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

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2011-2012 Regular Sessions

I N A S S E M B L Y

February 4, 2011

Introduced by M. of A. SCHROEDER -- read once and referred to the Committee on Ways and Means

AN ACT to amend the state finance law, in relation to the creation of a debt management board and limiting the amount of state related debt that may be issued

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

Section 1. The state finance law is amended by adding a new article 5-E to read as follows:

ARTICLE 5-E
DEBT MANAGEMENT BOARD

SECTION 69-N. DEFINITIONS.
69-O. NEW YORK STATE DEBT MANAGEMENT BOARD; CREATION; PROCEDURE.
69-P. POWERS, FUNCTIONS AND DUTIES OF THE NEW YORK STATE DEBT MANAGEMENT BOARD; LIMITATIONS.
69-Q. COMPTROLLER'S DUTIES WITH RESPECT TO BOARD.

S 69-N. DEFINITIONS. AS USED IN THIS ARTICLE AND ARTICLE FIVE-F OF THIS CHAPTER, THE FOLLOWING TERMS SHALL HAVE THE MEANINGS SET FORTH BELOW:

1. STATE DEBT. ALL BONDS AND BOND ANTICIPATION NOTES ISSUED BY THE STATE COMPTROLLER PURSUANT TO ARTICLE FIVE OF THIS CHAPTER.

2. STATE BACKED DEBT. ALL DEBT OTHER THAN STATE DEBT ISSUED BY ANY STATE OFFICER, AGENCY, OR ENTITY, INCLUDING ANY STATE PUBLIC BENEFIT CORPORATION OR OTHER STATE PUBLIC CORPORATION, AND BACKED BY ANY AGREEMENT BY THE STATE, STATUTORY, CONTRACTUAL, OR OTHERWISE, WHETHER OR NOT CONTINGENT, WHEREBY THE STATE MAY BE CALLED UPON TO MAKE PAYMENTS, WHETHER OR NOT SUBJECT TO APPROPRIATION, THAT ARE INTENDED TO BE USED, DIRECTLY OR INDIRECTLY, TO PAY DEBT SERVICE. STATE BACKED DEBT SHALL NOT INCLUDE DEBT BACKED BY MONEY APPROPRIATED OR OTHERWISE MADE AVAILABLE FOR SOME OTHER PURPOSE THAT MAY INCIDENTALLY BE USED TO PAY DEBT SERVICE

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

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OR THAT IS APPROPRIATED TO ANOTHER ENTITY FOR A PURPOSE OTHER THAN PAYMENT OF DEBT SERVICE AND WHICH MAY BE INTERCEPTED BY THE COMPTROLLER ON A CONTINGENT BASIS TO PAY DEBT SERVICE OF THE ISSUING ENTITY.

3. STATE RELATED DEBT. ALL STATE DEBT AND ALL STATE BACKED DEBT.

S 69-O. NEW YORK STATE DEBT MANAGEMENT BOARD; CREATION; PROCEDURE. 1. THE NEW YORK STATE DEBT MANAGEMENT BOARD IS HEREBY CREATED TO HAVE AND EXERCISE THE POWERS, DUTIES, AND PREROGATIVES PROVIDED BY THE PROVISIONS OF THIS ARTICLE AND ANY OTHER PROVISION OF LAW.

2. THE MEMBERSHIP OF THE BOARD SHALL CONSIST OF SEVEN PERSONS, INCLUDING THE GOVERNOR, THE DIRECTOR OF THE BUDGET, THE STATE COMPTROLLER, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE ASSEMBLY, AND MINORITY LEADER OF THE SENATE. THE GOVERNOR SHALL DESIGNATE THE CHAIRPERSON, WHO SHALL SERVE AT THE PLEASURE OF THE GOVERNOR. EACH MEMBER OF THE BOARD SHALL BE ENTITLED TO DESIGNATE A REPRESENTATIVE TO ATTEND MEETINGS OF THE BOARD IN HIS OR HER PLACE AND TO VOTE OR OTHERWISE ACT ON HIS OR HER BEHALF IN HIS OR HER ABSENCE. NOTICE OF SUCH DESIGNATION SHALL BE FURNISHED IN WRITING TO THE BOARD BY THE DESIGNATED MEMBER. A REPRESENTATIVE SHALL SERVE AT THE PLEASURE OF THE DESIGNATING MEMBER DURING THE MEMBER'S TERM OF OFFICE. A REPRESENTATIVE SHALL NOT BE AUTHORIZED TO DELEGATE ANY OF HIS OR HER DUTIES OR FUNCTIONS TO ANY OTHER PERSON.

3. THE BOARD SHALL ACT WHENEVER AUTHORIZED BY A MAJORITY OF ALL VOTES CAST AT A MEETING OF THE BOARD. EACH MEMBER OF THE BOARD SHALL BE ENTITLED TO AS MANY VOTES AS FOLLOWS:

A. THE GOVERNOR SHALL HAVE SEVENTY-FIVE VOTES;

B. THE STATE COMPTROLLER SHALL HAVE SEVENTY-FIVE VOTES;

C. THE SPEAKER OF THE ASSEMBLY SHALL HAVE THE NUMBER OF VOTES EQUAL TO ONE HUNDRED TIMES THE NUMBER OF MEMBERS OF HIS OR HER POLITICAL PARTY WITHIN HIS OR HER HOUSE DIVIDED BY THE TOTAL NUMBER OF MEMBERS IN HIS OR HER HOUSE ROUNDED TO THE NEAREST WHOLE NUMBER;

D. THE MAJORITY LEADER OF THE SENATE SHALL HAVE THE NUMBER OF VOTES EQUAL TO ONE HUNDRED TIMES THE NUMBER OF MEMBERS OF HIS OR HER POLITICAL PARTY WITHIN HIS OR HER HOUSE DIVIDED BY THE TOTAL NUMBER OF MEMBERS IN HIS OR HER HOUSE ROUNDED TO THE NEAREST WHOLE NUMBER;

E. THE MINORITY LEADER OF THE ASSEMBLY SHALL HAVE THE NUMBER OF VOTES EQUAL TO ONE HUNDRED TIMES THE NUMBER OF MEMBERS OF HIS OR HER POLITICAL PARTY WITHIN HIS OR HER HOUSE DIVIDED BY THE TOTAL NUMBER OF MEMBERS IN HIS OR HER HOUSE ROUNDED TO THE NEAREST WHOLE NUMBER;

F. THE MINORITY LEADER OF THE SENATE SHALL HAVE THE NUMBER OF VOTES EQUAL TO ONE HUNDRED TIMES THE NUMBER OF MEMBERS OF HIS OR HER POLITICAL PARTY WITHIN HIS OR HER HOUSE DIVIDED BY THE TOTAL NUMBER OF MEMBERS IN HIS OR HER HOUSE ROUNDED TO THE NEAREST WHOLE NUMBER;

G. THE DIRECTOR OF THE BUDGET SHALL VOTE ONLY WHEN ACTING AS THE DESIGNATED REPRESENTATIVE OF ONE OR MORE OF THE OTHER BOARD MEMBERS.

4. NOTWITHSTANDING ANY INCONSISTENT PROVISIONS OF LAW, GENERAL, SPECIAL, OR LOCAL, NO OFFICER OR EMPLOYEE OF THE STATE, OF ANY POLITICAL SUBDIVISION OF THE STATE, OF ANY GOVERNMENTAL ENTITY OPERATING ANY PUBLIC SCHOOL OR COLLEGE, OR OF ANY OTHER PUBLIC AGENCY OR INSTRUMENTALITY OR UNIT OF GOVERNMENT WHICH EXERCISES GOVERNMENTAL POWERS UNDER THE LAWS OF THE STATE SHALL FORFEIT SUCH OFFICE OR EMPLOYMENT BY REASON OF ACCEPTANCE OR APPOINTMENT AS A MEMBER, REPRESENTATIVE, OFFICER, EMPLOYEE, OR AGENT OF THE BOARD, NOR SHALL SERVICE AS SUCH MEMBER, REPRESENTATIVE, OFFICER, EMPLOYEE, OR AGENT OF THE BOARD BE DEEMED INCOMPATIBLE OR IN CONFLICT WITH SUCH OFFICE OR EMPLOYMENT. THE MEMBERS, THEIR REPRESENTATIVES, OFFICERS, AND STAFF OF THE BOARD SHALL BE DEEMED EMPLOYEES WITHIN THE MEANING OF SECTION SEVENTEEN OF THE PUBLIC OFFICERS LAW.

5. THE MEMBERS OF THE BOARD SHALL SERVE WITHOUT SALARY OR PER DIEM ALLOWANCE BUT SHALL BE ENTITLED TO REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF OFFICIAL DUTIES PURSUANT TO THIS SECTION OR OTHER PROVISION OF LAW; PROVIDED, HOWEVER, THAT SUCH MEMBERS AND REPRESENTATIVES ARE NOT, AT THE TIME SUCH EXPENSES ARE INCURRED, PUBLIC EMPLOYEES OTHERWISE ENTITLED TO SUCH REIMBURSEMENT.

S 69-P. POWERS, FUNCTIONS AND DUTIES OF THE NEW YORK STATE DEBT MANAGEMENT BOARD; LIMITATIONS. 1. THE NEW YORK STATE DEBT MANAGEMENT BOARD SHALL HAVE THE POWER AND IT SHALL BE ITS DUTY TO MAKE RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE OF POLICIES TO GOVERN THE ISSUANCE OF ALL STATE RELATED DEBT AND OTHER CAPITAL FINANCING MATTERS.

2. ON OR BEFORE THE FIRST DAY OF THE SIXTH MONTH AFTER THIS ARTICLE SHALL HAVE BECOME LAW, THE BOARD SHALL SUGGEST POLICY GUIDELINES FOR THE ISSUANCE OF ALL STATE RELATED DEBT AND FOR CAPITAL FINANCING. SUCH GUIDELINES SHALL COVER, AMONG OTHER ITEMS, THE FOLLOWING:

A. CAPITALIZATION OF INTEREST ON STATE RELATED DEBT;

B. CRITERIA FOR REFUNDING OUTSTANDING STATE RELATED DEBT, INCLUDING, BUT NOT LIMITED TO, SUCH MATTERS AS EXTENSION OF THE TERM OF OUTSTANDING DEBT, PRESENT VALUE SAVINGS, AND DISTRIBUTION OF ACTUAL SAVINGS;

C. THE USE OF CREDIT ENHANCEMENTS WITH RESPECT TO STATE RELATED DEBT;

D. SUCH OTHER POLICY MATTERS RELATING TO THE ISSUANCE OF STATE RELATED DEBT AS THE BOARD MAY DETERMINE TO BE APPROPRIATE;

E. STRUCTURE FOR STATE RELATED DEBT, SUCH AS RATE OF AMORTIZATION OF PRINCIPAL; AND

F. GOALS FOR THE PROPORTION OF STATE CAPITAL SPENDING TO BE FINANCED WITH DEBT AND THE PROPORTION TO BE FINANCED WITH CURRENT APPROPRIATIONS.

THE BOARD SHALL ANNUALLY REVIEW THE RECOMMENDED POLICY GUIDELINES AND RECOMMEND SUCH CHANGES OR ADDITIONS AS IT DEEMS ADVISABLE ON OR BEFORE THE ANNIVERSARY DATE OF ITS ORIGINAL RECOMMENDATION.

S 69-Q. COMPTROLLER'S DUTIES WITH RESPECT TO BOARD. THE COMPTROLLER SHALL COLLECT AND ANALYZE DATA WITH RESPECT TO OUTSTANDING STATE RELATED DEBT AND, AT LEAST ANNUALLY, ON OR BEFORE THE LAST DAY OF THE CALENDAR YEAR, REPORT TO THE BOARD, THE GOVERNOR, AND THE LEGISLATURE ON THE CONDITION OF STATE RELATED DEBT. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE AMOUNT OF STATE RELATED DEBT OUTSTANDING, THE DIFFERENT ISSUERS AND CATEGORIES OF SUCH DEBT, AND ANY DIFFERENCES IN CREDIT RATING AMONG CATEGORIES AND ISSUERS.

S 2. The state finance law is amended by adding a new article 5-F to read as follows:

ARTICLE 5-F
LIMITATIONS ON STATE RELATED DEBT

SECTION 69-T. DEFINITIONS.

69-U. LIMITATIONS ON THE ISSUANCE OF STATE RELATED DEBT.

S 69-T. DEFINITIONS. WHEN USED IN THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE MEANINGS SET FORTH BELOW:

1. TOTAL PERSONAL INCOME OF THE STATE. THE MOST RECENTLY PUBLISHED ESTIMATED DOLLAR AMOUNT DETERMINED AS TOTAL PERSONAL INCOME OF THE STATE OF NEW YORK BY THE UNITED STATES DEPARTMENT OF COMMERCE OR ANY SUCCESSOR AGENCY FOR THE FOUR MOST RECENT SUCCESSIVE CALENDAR QUARTERS FOR WHICH INFORMATION IS AVAILABLE PRIOR TO THE SUBMISSION OF THE BUDGET BILLS PURSUANT TO ARTICLE SEVEN OF THE CONSTITUTION. SUBSEQUENT REVISIONS OF THE PUBLISHED ESTIMATED DOLLAR AMOUNT FOR SUCH CALENDAR QUARTERS SHALL NOT AFFECT THE VALIDITY OF THE DETERMINATION MADE FOR ANY FISCAL YEAR.

2. TOTAL GOVERNMENTAL FUNDS RECEIPTS OF THE STATE. THE TOTAL AMOUNT OF RECEIPTS OF ALL GOVERNMENTAL FUNDS OF THE STATE, AS REPORTED BY THE

STATE COMPTROLLER FOR THE FISCAL YEAR PRECEDING THE YEAR IN WHICH DEBT IS TO BE INCURRED.

S 69-U. LIMITATIONS ON THE ISSUANCE OF STATE RELATED DEBT. 1. NO STATE BACKED DEBT SHALL BE CONTRACTED AFTER MARCH THIRTY-FIRST, TWO THOUSAND ELEVEN, AND NO STATE DEBT AUTHORIZED AFTER MARCH THIRTY-FIRST, TWO THOUSAND ELEVEN, SHALL BE CONTRACTED UNLESS, WHEN ADDED TO THE AGGREGATE OUTSTANDING PRINCIPAL AMOUNT OF STATE BACKED DEBT CONTRACTED AFTER MARCH THIRTY-FIRST, TWO THOUSAND ELEVEN AND STATE DEBT AUTHORIZED AND CONTRACTED AFTER MARCH THIRTY-FIRST, TWO THOUSAND ELEVEN, THE TOTAL AMOUNT SHALL BE LESS THAN THE DESIGNATED PERCENTAGE OF THE TOTAL PERSONAL INCOME OF THE STATE. THE DESIGNATED PERCENTAGE SHALL BE ONE PERCENT FOR FISCAL YEAR TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE AND SHALL INCREASE BY ONE-THIRD OF ONE PERCENT IN EACH OF THE SEVEN SUBSEQUENT FISCAL YEARS. THE DESIGNATED PERCENTAGE FOR FISCAL YEAR TWO THOUSAND SIXTEEN--TWO THOUSAND SEVENTEEN AND FOR EACH FISCAL YEAR THEREAFTER SHALL BE THREE AND ONE-HALF PERCENT. DEBT ISSUED TO REFUND STATE BACKED DEBT THAT WAS ORIGINALLY ISSUED ON OR PRIOR TO MARCH THIRTY-FIRST, TWO THOUSAND ELEVEN SHALL BE EXCLUDED FROM THE CALCULATION; PROVIDED THAT THERE WAS A DEBT SERVICE SAVINGS IN EACH YEAR TO MATURITY OF THE REFUNDING DEBT. STATE BACKED DEBT ISSUED TO REFUND STATE BACKED DEBT ISSUED AFTER MARCH THIRTY-FIRST, TWO THOUSAND ELEVEN AND STATE DEBT ISSUED TO REFUND STATE DEBT AUTHORIZED AFTER MARCH THIRTY-FIRST, TWO THOUSAND ELEVEN SHALL BE EXCLUDED FROM THE CALCULATION UNTIL THE DEBT IT IS ISSUED TO REFUND IS EXTINGUISHED, AT WHICH TIME A PORTION OF SUCH DEBT SHALL BE INCLUDED THAT IS EQUAL TO THE AMOUNT OF THE REFUNDING DEBT THEN OUTSTANDING MULTIPLIED BY A FRACTION THE NUMERATOR OF WHICH IS EQUAL TO THE AMOUNT OF DEBT REFUNDED AND THE DENOMINATOR OF WHICH IS EQUAL TO THE AMOUNT OF REFUNDING DEBT INCURRED.

2. ADDITIONALLY, NO STATE RELATED DEBT SHALL BE ISSUED AFTER SEPTEMBER FIRST, TWO THOUSAND ELEVEN IF THE AGGREGATE ANNUAL AMOUNT OF DEBT SERVICE, AS DETERMINED BY THE COMPTROLLER, DUE ON ALL STATE RELATED DEBT OUTSTANDING ON THE LAST DAY OF THE PRECEDING FISCAL YEAR AND EXPECTED TO BE PAID, DIRECTLY OR INDIRECTLY, FROM STATE APPROPRIATIONS OR OTHER STATE PAYMENTS SHALL EXCEED IN ANY YEAR, FIVE AND THREE-QUARTERS PERCENT OF TOTAL GOVERNMENTAL FUNDS RECEIPTS OF THE STATE FOR SUCH PRECEDING FISCAL YEAR.

3. THE COMPTROLLER SHALL DEVELOP PROCEDURES FOR MAINTAINING AT ALL TIMES A CURRENT TOTAL OF THE AGGREGATE AMOUNT OF DEBT SERVICE DUE IN ANY YEAR AND EXPECTED TO BE PAID, DIRECTLY OR INDIRECTLY, FROM STATE APPROPRIATIONS, OR OTHERWISE FROM STATE PAYMENTS, ON ALL STATE RELATED DEBT THEN OUTSTANDING. SUCH PROCEDURES SHALL BE IN PLACE NO LATER THAN AUGUST FIRST, TWO THOUSAND ELEVEN.

S 3. This act shall take effect immediately.