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I N   S E N A T E

January 12, 2012

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

AN ACT to amend the state finance law, in relation to interest and  
collection fees assessed on debts owed by the state to municipalities

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

1     Section 1. The state finance law is amended by adding a new section  
2     16-a to read as follows:  
3     S 16-A. INTEREST AND COLLECTION FEES ASSESSED ON DEBTS OWED BY THE  
4     STATE TO MUNICIPALITIES. 1. AS USED IN THIS SECTION: (A) "STATE" SHALL  
5     MEAN ANY STATE DEPARTMENT, BOARD, BUREAU, DIVISION, COMMISSION, COMMIT-  
6     TEE, PUBLIC AUTHORITY, PUBLIC BENEFIT CORPORATION, COUNCIL, OFFICE, OR  
7     OTHER GOVERNMENTAL ENTITY PERFORMING A GOVERNMENTAL OR PROPRIETARY FUNC-  
8     TION FOR THE STATE; (B) "MUNICIPALITY" SHALL MEAN A COUNTY, TOWN,  
9     VILLAGE OR SCHOOL DISTRICT AND ANY DEPARTMENT, BOARD, BUREAU, DIVISION,  
10    COMMISSION, COMMITTEE, PUBLIC BENEFIT CORPORATION, COUNCIL, OFFICE OR  
11    OTHER GOVERNMENTAL ENTITY PERFORMING A GOVERNMENTAL OR PROPRIETARY FUNC-  
12    TION FOR SUCH COUNTY, TOWN, VILLAGE OR SCHOOL DISTRICT; (C) "DEBT" SHALL  
13    MEAN ANY LIQUIDATED SUM DUE AND OWING ANY MUNICIPALITY BY THE STATE  
14    WHICH HAS ACCRUED PURSUANT TO LAW OR THROUGH CONTRACT SUBROGATION, TORT  
15    OR OTHER CAUSE OF ACTION, REGARDLESS OF WHETHER THERE IS AN OUTSTANDING  
16    JUDGMENT FOR THAT SUM; (D) "LIQUIDATED" SHALL MEAN AN AMOUNT WHICH IS  
17    FIXED OR CERTAIN OR CAPABLE OF BEING READILY CALCULATED, WHETHER OR NOT  
18    THE UNDERLYING LIABILITY OR AMOUNT OF THE DEBT IS DISPUTED; AND (E)  
19    "OUTSTANDING DEBT" SHALL MEAN THE AMOUNT SET FORTH IN THE BILLING  
20    INVOICE OR NOTICE MAILED TO THE STATE, TOGETHER WITH LATE PAYMENT CHARG-  
21    ES AND INTEREST, LESS ANY PAYMENTS MADE BY OR ON BEHALF OF THE DEBTOR.  
22    2. FOR THE PURPOSES OF THIS SECTION, A MUNICIPALITY SHALL MAIL, OR  
23    OTHERWISE NOTIFY AS MAY BE PERMITTED OR REQUIRED BY CONTRACT BETWEEN THE  
24    MUNICIPALITY AND THE STATE, A DATED BILLING INVOICE OR NOTICE TO THE  
25    STATE ON OR ABOUT THE DAY IT IS DATED, AND RECEIPT BY THE DEBTOR OF A  
26    BILLING INVOICE OR NOTICE IS DEEMED TO HAVE OCCURRED FIVE DAYS AFTER ITS  
27    DATE.

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

LBD13607-01-1

1 3. THE STATE SHALL PAY SUCH DEBT ON OR BEFORE THE THIRTIETH DAY  
2 FOLLOWING RECEIPT OF ANY BILLING INVOICE OR NOTICE SENT BY THE MUNICI-  
3 PALITY THAT SUCH DEBT IS DUE AND OWING.

4 4. EXCEPT AS PROVIDED IN SUBDIVISION ELEVEN OF THIS SECTION, IF THE  
5 STATE FAILS TO MAKE PAYMENT OF A DEBT TO A MUNICIPALITY WITHIN THE PERI-  
6 OD SET FORTH IN SUBDIVISION THREE OF THIS SECTION IT SHALL PAY, IN ADDI-  
7 TION TO THE AMOUNT OF DEBT, INTEREST ON THE OUTSTANDING BALANCE OF THE  
8 DEBT, ACCRUING ON THE DATE ON WHICH THE RECEIPT OF THE FIRST BILLING  
9 INVOICE OR FIRST NOTICE OCCURS, COMPUTED AT THE UNDERPAYMENT RATE WHICH  
10 IS IN EFFECT ON THE DATE WHICH THE RECEIPT OF THE FIRST BILLING INVOICE  
11 OR FIRST BILLING NOTICE OCCURS. FOR PURPOSES OF THIS SECTION, THE UNDER-  
12 PAYMENT RATE SHALL BE THAT RATE SET BY THE COMMISSIONER OF TAXATION AND  
13 FINANCE AND PUBLISHED IN THE STATE REGISTER PURSUANT TO SUBSECTION (E)  
14 OF SECTION ONE THOUSAND NINETY-SIX OF THE TAX LAW MINUS FOUR PERCENTAGE  
15 POINTS.

16 5. EXCEPT AS PROVIDED IN SUBDIVISION ELEVEN OF THIS SECTION, IN ADDI-  
17 TION TO THE CHARGES REFERRED TO IN SUBDIVISION FOUR OF THIS SECTION, IF  
18 THE STATE FAILS TO MAKE PAYMENT OF A DEBT SUBJECT TO THIS SECTION WITHIN  
19 NINETY DAYS OF RECEIPT BY THE STATE OF THE FIRST BILLING INVOICE OR  
20 NOTICE, THE STATE MAY BE ASSESSED AN ADDITIONAL COLLECTION FEE CHARGE TO  
21 COVER THE COST OF PROCESSING, HANDLING AND COLLECTING SUCH DEBT, NOT TO  
22 EXCEED TWENTY-TWO PERCENT OF THE OUTSTANDING DEBT, WHICH COLLECTION FEE  
23 SHALL BE ADDED TO AND PAYABLE IN THE SAME MANNER AS THE OUTSTANDING  
24 DEBT. THE ASSESSED COLLECTION FEE CHARGE MAY NOT EXCEED THE AGENCY'S  
25 ESTIMATED COST OF PROCESSING, HANDLING AND COLLECTING SUCH DEBT.

26 6. (A) ANY INTEREST OR LATE PAYMENT CHARGES ASSESSED PURSUANT TO THIS  
27 SECTION SHALL BE PAID UPON NOTICE AND DEMAND AND SHALL BE TREATED AND  
28 COLLECTED IN THE SAME MANNER AS THE ORIGINAL DEBT WHICH IS DUE AND  
29 OWING.

30 (B) IN ANY ACTION BROUGHT BY OR ON BEHALF OF A MUNICIPALITY TO RECOVER  
31 AN OUTSTANDING DEBT, A DEMAND FOR COLLECTION FEE CHARGES MAY BE SET  
32 FORTH IN THE STATEMENT OF DAMAGES SOUGHT.

33 7. THE DIRECTOR OF THE BUDGET SHALL PROMULGATE SUCH GUIDELINES AS THE  
34 DIRECTOR DEEMS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

35 8. THE PROVISIONS OF THIS SECTION SHALL NOT SUPERSEDE ANY PROVISION OF  
36 LAW OR REGULATION OR CONTRACT WHICH PROVIDES FOR THE IMPOSITION OF  
37 INTEREST OR LATE PAYMENT OR COLLECTION FEE CHARGES ON DEBTS NOT SATIS-  
38 FIED IN A TIMELY MANNER.

39 9. ANY CONTRACTS ENTERED INTO OR ANY REGULATION PROMULGATED ON OR  
40 AFTER THE EFFECTIVE DATE OF THIS SECTION WHICH PURPORTS TO WAIVE THE  
41 IMPOSITION OF INTEREST OR LATE PAYMENT OR COLLECTION FEE CHARGES OR  
42 IMPOSES INTEREST OR LATE PAYMENT CHARGES OR COLLECTION FEE CHARGES IN A  
43 MANNER INCONSISTENT WITH THIS SECTION SHALL BE VOID.

44 10. EVERY MUNICIPALITY TO WHICH THIS SECTION IS APPLICABLE IS AUTHOR-  
45 IZED TO ENTER INTO WRITTEN AGREEMENTS WITH THE STATE UNDER WHICH THE  
46 STATE IS ALLOWED TO SATISFY LIABILITY FOR PAYMENT OF ANY DEBT, INCLUDING  
47 ANY INTEREST IMPOSED BY THIS SECTION ON THAT PORTION OF SUCH DEBT AS TO  
48 WHICH AN EXTENSION IS GRANTED, IN INSTALLMENT PAYMENTS IF THE MUNICI-  
49 PALITY DETERMINES THAT SUCH AGREEMENT WILL FACILITATE COLLECTION OF SUCH  
50 LIABILITY.

51 11. FOR PURPOSES OF THIS SECTION, THE TIME OF BILLING SHALL BE TOLLED:

52 (A) IF THE STATE SHALL NOTIFY THE MUNICIPALITY IN WRITING WITHIN THIRTY  
53 DAYS OF RECEIPT OF THE BILLING THAT SUCH BILLING REQUIRES SUBMISSION OF  
54 ADDITIONAL INFORMATION OR THE STATE OTHERWISE HAS OBJECTION TO THE FORM  
55 OR CONTENT OF SUCH BILLING REQUIRING CLARIFICATION, UNTIL SUCH TIME AS  
56 THE MUNICIPALITY SHALL RESPOND TO SUCH REQUEST FOR ADDITIONAL INFORMA-

1 TION OR MODIFICATION; (B) IF THE FUNDS FOR PAYMENT BY THE STATE ARE  
2 BEING PROVIDED BY ANOTHER ENTITY, UNTIL SUCH FUNDS ARE RECEIVED BY THE  
3 STATE FROM SUCH ENTITY; OR (C) IF THE EXPENDITURE FOR SUCH BILLING BY  
4 THE STATE HAS NOT BEEN AUTHORIZED OR APPROVED BY THE STATE, UNTIL SUCH  
5 EXPENDITURE HAS BEEN AUTHORIZED OR APPROVED.

6 S 2. This act shall take effect on the ninetieth day after it shall  
7 have become a law.