

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:

1 Section 1. The education law is amended by adding a new section 273-b
2 to read as follows:
3 S 273-B. PUBLIC LIBRARY REVOLVING LOAN PROGRAM. 1. THE COMMISSIONER
4 SHALL ESTABLISH AND MAINTAIN A PUBLIC LIBRARY REVOLVING LOAN PROGRAM TO
5 PROVIDE LOANS TO LIBRARIES AND LIBRARY SYSTEMS FOR THE PURPOSES DESIGNATED
6 IN THIS PART. NOTWITHSTANDING THE PROVISIONS OF ANY LAW TO THE
7 CONTRARY, STATE FINANCIAL ASSISTANCE IN THE FORM OF A LOAN MAY BE
8 PROVIDED FOR UP TO FIFTY PERCENT OF THE APPROVED COSTS (EXCLUDING FEASIBILITY
9 STUDIES, PLANS OR SIMILAR ACTIVITIES) OF ELIGIBLE PROJECTS FOR
10 CAPITAL CONSTRUCTION BY AN ELIGIBLE PUBLIC, FREE ASSOCIATION OR INDIAN
11 LIBRARY, OR BY A PUBLIC, SCHOOL OR REFERENCE AND RESEARCH LIBRARY
12 RESOURCE SYSTEM, AS PROVIDED IN THIS SECTION. IN AREAS OF HIGH NEED, AS
13 DEFINED IN REGULATIONS PROMULGATED BY THE COMMISSIONER PURSUANT TO
14 SUBDIVISION ELEVEN OF THIS SECTION, A LOAN OF UP TO SEVENTY-FIVE PERCENT
15 OF APPROVED COSTS (EXCLUDING FEASIBILITY STUDIES, PLANS OR SIMILAR
16 ACTIVITIES) MAY BE APPROVED BY THE COMMISSIONER. A LIBRARY OR LIBRARY
17 SYSTEM MAY SUBMIT AN APPLICATION FOR STATE FINANCIAL ASSISTANCE FOR
18 ELIGIBLE PROJECTS AS PROVIDED IN THIS SECTION.
19 2. THE COMMISSIONER, AFTER REVIEW OF THE PROGRAMMATIC AND FISCAL NEEDS
20 AND RESOURCES OF THE PROJECT AND THE LIBRARY OR LIBRARY SYSTEM, SHALL
21 MAKE A DETERMINATION, SUBJECT TO THE RESTRICTIONS, LIMITATIONS, RESPONSIBILITIES
22 AND REQUIREMENTS OF THIS SECTION, AS TO THE AMOUNT OF STATE
23 FINANCIAL ASSISTANCE THAT THE LIBRARY OR LIBRARY SYSTEM MAY RECEIVE FOR
24 ANY AMOUNT UP TO AND INCLUDING THE AMOUNT OF FIVE HUNDRED THOUSAND
25 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:

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

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

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

14 (I) THE AMOUNT OF FINANCIAL ASSISTANCE, THE TERMS AND CONDITIONS UPON
15 WHICH IT IS PROVIDED, THE USEFUL LIFE OF THE ELIGIBLE PROJECT AND THE
16 METHOD OF DEPRECIATING THE ELIGIBLE PROJECT FOR PURPOSES OF THE REPAY-
17 MENT PROVISIONS OF THE AGREEMENT;

18 (II) A REQUIREMENT THAT, UPON A FINDING BY THE COMMISSIONER THAT A
19 PROJECT HAS NOT BEEN COMPLETED, OR HAS NOT BEEN COMPLETED IN ACCORDANCE
20 WITH THE TERMS OF THE AGREEMENT, THE OUTSTANDING BALANCE OF FINANCIAL
21 ASSISTANCE PROVIDED IN THE FORM OF A LOAN SHALL BE REPAYED TO THE COMMIS-
22 SIONER BY THE GUARANTOR, PROVIDED THAT UPON A SHOWING OF GOOD CAUSE BY
23 THE ORGANIZATION THE COMMISSIONER SHALL GRANT AN EXTENSION OF UP TO
24 NINETY DAYS FROM THE DATE OF SUCH FINDING TO ALLOW THE LIBRARY OR
25 LIBRARY SYSTEM TO COMPLETE THE PROJECT IN ACCORDANCE WITH THE TERMS OF
26 THE AGREEMENT, AND FURTHER PROVIDED THAT THE COMMISSIONER SHALL PROVIDE
27 NO MORE THAN TWO SUCH EXTENSIONS FROM THE DATE OF SUCH FINDING TO ALLOW
28 THE LIBRARY OR LIBRARY SYSTEM TO COMPLETE THE PROJECT IN ACCORDANCE WITH
29 THE TERMS OF THE AGREEMENT.

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

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

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

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

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

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

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

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

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

40 S 91-H. PUBLIC LIBRARY REVOLVING LOAN FUND. 1. THERE IS HEREBY ESTAB-
41 LISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSION-
42 ER OF TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE "PUBLIC
43 LIBRARY REVOLVING LOAN FUND".

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

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