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

5657

2011-2012 Regular Sessions

I N A S S E M B L Y

February 24, 2011

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

AN ACT to amend the state finance law, in relation to establishing a competitive process for negotiated bond offerings for every state agency and public authority that issues bonds

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 section 136-d to read as follows:

S 136-D. COMPETITIVE PROCESS FOR NEGOTIATED BOND OFFERINGS. 1. FOR THE PURPOSES OF THIS SECTION, "BONDS" SHALL MEAN (A) ANY BONDS OR OTHER EVIDENCES OF INDEBTEDNESS ISSUED AFTER THE EFFECTIVE DATE OF THIS SECTION BY THE STATE OR ANY STATE DEPARTMENT, BOARD, AGENCY OR AUTHORITY OR (B) ANY BONDS OR OTHER EVIDENCES OF INDEBTEDNESS ISSUED BY ANY PUBLIC AUTHORITY CREATED UNDER ARTICLES TWO, THREE, FOUR, FIVE, SIX, SEVEN, AND EIGHT OF THE PUBLIC AUTHORITIES LAW OR (C) ANY BONDS OR OTHER EVIDENCES OF INDEBTEDNESS ISSUED BY ANY JOINT POWERS AGENCY CREATED BY THE STATE THAT ARE PAYABLE FROM PAYMENTS MADE WITH RESPECT TO A LEASE OR SALE OF PROPERTY TO OR FROM THE STATE OF ANY STATE DEPARTMENT, BOARD, AGENCY, OR AUTHORITY. FOR PURPOSES OF THIS SECTION, "EVIDENCE OF INDEBTEDNESS" INCLUDES, BUT IS NOT LIMITED TO, CERTIFICATES OF PARTICIPATION OR INTERESTS IN ANY RENTAL OR LEASE PAYMENTS OR INSTALLMENT PURCHASE PAYMENTS, IN AN AGGREGATE PRINCIPAL AMOUNT EXCEEDING TEN MILLION DOLLARS, TO BE MADE BY THE STATE OR ANY STATE DEPARTMENT, BOARD, AGENCY, OR PUBLIC AUTHORITY WITH RESPECT TO BUILDINGS OR OTHER CAPITAL IMPROVEMENTS.

2. THE PROVISIONS OF THIS SECTION SHALL APPLY TO EVERY BOND REGARDLESS OF ANY OTHER PROVISION OF LAW OR ANY PROVISION OF THE BOND'S AUTHORIZATION.

3. (A) EXCEPT AS PROVIDED IN PARAGRAPHS (B), (C), AND (D) OF THIS SUBDIVISION, THE COMPTROLLER, IN EXERCISING THE DUTIES OF AGENT FOR OFFERING AND SELLING BONDS, WHOSE DUTIES INCLUDE, AMONG OTHERS, ESTAB-

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

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LISHING THE TIMING OF A SALE, PREPARATION OR APPROVAL OF THE DOCUMENTATION FOR THE SALE, SOLE AUTHORITY TO SELECT THE UNDERWRITERS FOR NEGOTIATING THE SALE, AND EXECUTING THE BOND PURCHASE AGREEMENT ON BEHALF OF THE STATE OR THE STATE'S AGENCIES, SHALL BE RESPONSIBLE FOR DEVELOPING AND IMPLEMENTING A COMPETITIVE PROCESS FOR SELECTION OF UNDERWRITERS FOR NEGOTIATED OFFERINGS OF BONDS. THE COMPETITIVE PROCESS MAY BE CONDUCTED ON AN ISSUE-BY-ISSUE BASIS OR TO ESTABLISH ONE OR MORE POOLS OF UNDERWRITERS FOR VARIOUS TYPES OF ISSUES. THE COMPETITIVE PROCESS SHALL HAVE AT LEAST ALL OF THE FOLLOWING FEATURES:

(I) SOLICITATION OF WRITTEN QUALIFICATIONS FROM AT LEAST TWENTY UNDERWRITING FIRMS;

(II) ESTABLISHMENT OF CRITERIA TO IDENTIFY SMALL FIRMS THAT ARE NEW YORK BASED;

(III) CONSIDERATION OF THE GOALS FOR SMALL FIRMS AND MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION IN PROFESSIONAL BOND SERVICES CONTRACTS;

(IV) REQUIRING THAT THE WRITTEN SUBMISSIONS SHALL BE AVAILABLE FOR INSPECTION AT THE OFFICE OF THE COMPTROLLER FOR A PERIOD OF AT LEAST SIX MONTHS;

(V) IF A POOL OF UNDERWRITERS IS ESTABLISHED, A REQUIREMENT THAT THE COMPETITIVE PROCESS SHALL BE REPEATED AT LEAST EVERY TWENTY-FOUR MONTHS TO REESTABLISH THE POOL OF UNDERWRITERS;

(VI) A PRIORITY OF DESIGNATION POLICY THAT HAS A GOAL OF SELECTING AT LEAST TWO QUALIFIED SMALL FIRMS OR MINORITY AND WOMEN BUSINESS ENTERPRISE FIRMS AS CO-SENIOR MANAGERS AND/OR CO-MANAGERS ON EVERY NEGOTIATED BOND ISSUANCE WITH A MINIMUM TOTAL PARTICIPATION OF TWENTY PERCENT;

(VII) REQUIRING THAT FIRMS SHALL MAKE APPLICATION AND BE QUALIFIED TO PROVIDE THE FOLLOWING SERVICES: BOOK RUNNING OR CO-SENIOR MANAGER, CO-MANAGER AND BOND COUNSEL;

(VIII) REQUIRING THAT FIRMS DESIGNATED AS SMALL FIRMS SHALL NOT HAVE GROSS EARNINGS THAT EXCEED AN AVERAGE OF THIRTY MILLION DOLLARS PER ANNUM OVER THE THREE YEARS PRIOR TO APPLICATION;

(IX) PROVIDING THAT THE MINIMUM NET CAPITAL REQUIREMENTS FOR APPLICANT QUALIFICATION SHALL NOT EXCEED TWO HUNDRED THOUSAND DOLLARS; AND

(X) SUCCESSFUL PARTICIPATION IN BOND UNDERWRITINGS IN OTHER STATES SHALL BE GIVEN DUE CONSIDERATION AND WEIGHT IN SELECTING QUALIFIED APPLICANTS.

(B) FOR NEGOTIATED OFFERINGS OF BONDS BY STATE FINANCING AUTHORITIES THAT ACT AS CONDUITS TO PROVIDE FINANCING TO OTHER PUBLIC, NONPROFIT, OR PRIVATE ORGANIZATIONS, THE COMPTROLLER SHALL USE THE COMPETITIVE PROCESS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION TO ESTABLISH ONE OR MORE POOLS OF UNDERWRITERS FOR EACH FINANCING AUTHORITY. EACH FINANCING AUTHORITY SHALL SELECT UNDERWRITERS FROM THE APPROVED STATE POOL OF UNDERWRITERS. THE COMPTROLLER MAY MAKE ADDITIONS TO A POOL WITHOUT COMPETITIVE SOLICITATION, ON A CASE-BY-CASE DETERMINATION UPON THE RECOMMENDATION OF A PROJECT APPLICANT, WHERE THE COMPTROLLER FINDS THAT THE UNDERWRITER TO BE ADDED HAS PROVIDED SIGNIFICANT SERVICES TO THE PROJECT APPLICANT WITH THE EXPECTATION OF COMPENSATION FOR THOSE SERVICES FROM UNDERWRITING THE REVENUE BONDS WHICH WILL FUND THE APPLICANT'S PROJECT.

(C) THE COMPTROLLER MAY SELECT UNDERWRITERS FOR A NEGOTIATED SALE OF BONDS BY MEANS OTHER THAN AS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION IF THE COMPTROLLER MAKES A WRITTEN FINDING THAT EXTRAORDINARY MARKET CONDITIONS DO NOT ALLOW ENOUGH TIME TO COMPLY WITH PARAGRAPH (A) OF THIS SUBDIVISION WITHOUT RISKING FINANCIAL DETRIMENT TO THE STATE. WITH THE WRITTEN AUTHORIZATION OF THE COMPTROLLER, AND CONSISTENT WITH

THIS PARAGRAPH, STATE AGENCIES AND PUBLIC AUTHORITIES MAY SELECT UNDERWRITERS FOR NEGOTIATED SALE OF BONDS BY MEANS OTHER THAN THE STATE POOL OF UNDERWRITERS.

(D) PARAGRAPHS (A), (B), AND (C) OF THIS SUBDIVISION ARE STRICTLY CONSTRUED TO APPLY TO THE OFFICE OF THE COMPTROLLER AND EVERY STATE AGENCY THAT ISSUES BONDS AND EVERY PUBLIC AUTHORITY CREATED UNDER ARTICLES TWO THROUGH EIGHT OF THE PUBLIC AUTHORITIES LAW.

(E) FOR NEGOTIATED SALES, THE COMPTROLLER SHALL MAINTAIN RECORDS OF ALL COST INFORMATION PERTINENT TO THE INITIAL OFFERING OF ALL STATE BONDS, EXCEPT THAT IN THE CASE OF BONDS ISSUED BY A STATE AUTHORIZED PUBLIC AUTHORITY, AS DESCRIBED IN PARAGRAPH (B) OF THIS SUBDIVISION, THE ISSUING PUBLIC AUTHORITY SHALL INSTEAD BE RESPONSIBLE FOR MAINTAINING THE SAME COST INFORMATION ON BONDS IT HAS ISSUED. THE INFORMATION SHALL INCLUDE, BUT NOT BE LIMITED TO, ALL OF THE FOLLOWING:

(I) ALL AMOUNTS PAID OUT OF BOND PROCEEDS TO THE UNDERWRITER, DETAILED BY MANAGEMENT FEE, TAKEDOWN, RISK, AND UNDERWRITER'S EXPENSES;

(II) ALL COSTS PAID OUT OF BOND PROCEEDS TO RATING AGENCIES FOR RATING OF THE BONDS;

(III) ALL FEES PAID OUT OF BOND PROCEEDS TO BOND COUNSELS, TRUSTEES, OR FINANCIAL ADVISERS RELATING TO THE INITIAL OFFERING OF THE BONDS; AND

(IV) THE INTEREST RATE TO BE PAID ON THE BONDS.

(F) FOR COMPETITIVE SALES, THE COMPTROLLER SHALL MAINTAIN RECORDS OF ALL BIDS SUBMITTED AND THE DOCUMENTATION OF BID VERIFICATIONS INCLUDING THE TERMS OF SALE AND THE CALCULATION OF NET INTEREST COST OR TRUE INTEREST COST.

(G) THE COMPTROLLER SHALL AUDIT THE COST RECORDS REQUIRED TO BE MAINTAINED PURSUANT TO PARAGRAPH (E) OF THIS SUBDIVISION AND CONDUCT A REVIEW OF THE RECORDS REQUIRED TO BE MAINTAINED PURSUANT TO PARAGRAPH (F) OF THIS SUBDIVISION.

(H) THE COMPTROLLER SHALL REPORT WHETHER THIS SECTION IS BEING FULLY IMPLEMENTED. THE COMPTROLLER SHALL MAKE COST AND INTEREST RATE COMPARISONS WITH SIMILAR INITIAL BOND OFFERINGS OF OTHER STATES WHERE POSSIBLE. THE COMPTROLLER SHALL SUBMIT A REPORT TO THE LEGISLATURE ON MARCH FIRST, TWO THOUSAND TWELVE, AND MARCH FIRST, TWO THOUSAND FOURTEEN, FOR BONDS SOLD DURING THE TWO CALENDAR YEARS IMMEDIATELY PRECEDING THE YEAR IN WHICH THE REPORT IS DUE.

S 2. This act shall take effect immediately.