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

5836

2011-2012 Regular Sessions

I N A S S E M B L Y

March 2, 2011

Introduced by M. of A. McENENY -- read once and referred to the Committee on Economic Development

AN ACT in relation to alternative finance investment bonds

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

Section 1. Legislative findings and intent. 1. New York's historical prosperity has derived from the freedom and innovative nature of the state's capital markets and New York's roles as a center of foreign trade and investment, which has helped build the industries and create the jobs that earned the state the nickname of the Empire State.

2. The legislature finds that in order to bring more jobs to New York in a global economy, and to increase the state's competitiveness, the state must find new sources of capital investment to create opportunities throughout the state. An innovative way to accomplish this goal would be to create alternate investment instruments that would attract capital from investors who for personal, moral or religious reasons are unable to use conventional debt instruments such as bonds due to their inability to purchase securities that generate interest.

3. New York has the proud heritage of being a model for the rest of the nation in the areas of ethnic, national, racial, and religious tolerance and diversity. However, over time large numbers of New Yorkers have been unable to participate in investment opportunities offered by the state, or in public-private partnerships due to the lack of diverse means of long term capital investments. Broadening the state's portfolio of investment instruments would not only enfranchise large groups of New Yorkers and lower the costs of state and local borrowing, but would also aid in community renewal and revitalization. Creating more inclusive forms of state financial opportunities would also broaden the streams of capital available to the state, lowering the cost of financing and once again involving the world's investors in the development of our state's economy.

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

LBD08345-02-1

4. The legislature therefore declares that expanding New York's tools for economic development by creating new forms of alternative investments would enable it to participate in the multi-billion dollar market for alternative investment vehicles akin to conventional bonds, thus freeing up new capital for business and job creation. The creation of these innovative financial instruments will furthermore permit individuals and institutions of all faiths to invest in and issue such instruments, redressing historic wrongs and low participation rates in our economy.

S 2. (1) Definitions. (a) "Alternative finance investment bond" shall mean a certificate of equal value representing undivided shares of ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activity.

(b) "Alternative finance investment bond agreement" shall mean an agreement where:

(i) the agreement provides for a person ("the bond holder") to pay a sum of money ("the capital") to another ("the bond issuer"),

(ii) the agreement identifies assets, or a class of assets, which the bond issuer will acquire for the purpose of generating income or gains directly or indirectly ("bond assets"),

(iii) the agreement specifies a period at the end of which they cease to have effect ("the bond term"),

(iv) the bond issuer undertakes under the agreement:

(A) to make a repayment of the capital ("the redemption payment") to the bond holder during or at the end of the bond term (whether or not in installments), and

(B) to pay to the bond holder other payments on one or more occasions during or at the end of the bond term ("additional payments"), and

(v) the amount of the additional payments does not exceed an amount which would be a reasonable commercial return on a loan of the capital.

(2) The chair of the dormitory authority, the director of the budget, the superintendent of banking, the commissioner of insurance, and the commissioner of taxation and finance are hereby authorized and directed to assist the chair of the New York state urban development corporation in creating, within one calendar year of the effective date of this act, an investment instrument for the state of New York that will be compliant with the definition of alternative finance investment bonds, and regulated in a manner consistent with traditional bonds and other debt instruments.

(3) The chair of the New York state urban development corporation is hereby directed to consult with the state comptroller and the attorney general concerning the regulation of alternative finance investment bonds, and whether such bonds may be issued by New York municipal entities in addition to any issuances by the state of New York, and shall provide the legislature with language necessary for the regulation of such security.

(4) Within ninety days of the effective date of this act, the chair of the New York state urban development corporation shall report to the governor, the temporary president of the senate, and the speaker of the assembly, the minority leader of the senate and minority leader of the assembly concerning the potential domestic and foreign market for alternative finance investment bonds, and how such investment vehicles might be used in economic development generally, and specifically in distressed census tracts.

S 3. This act shall take effect immediately.