

3527

2011-2012 Regular Sessions

I N S E N A T E

February 24, 2011

Introduced by Sens. OPPENHEIMER, DIAZ -- read twice and ordered printed,
and when printed to be committed to the Committee on Children and
Families

AN ACT to create the New York state child care facilities finance agency
and providing for its functions, powers and duties

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

1 Section 1. The New York state child care facilities finance agency act
2 is hereby enacted to read as follows:

3 NEW YORK STATE CHILD CARE FACILITIES
4 FINANCE AGENCY ACT

- 5 Section 1. Short title.
6 2. Declaration of policy and statement of purposes.
7 3. Definitions.
8 4. New York state child care facilities finance agency.
9 5. Powers of the agency.
10 6. Bonds and notes of the agency.
11 7. Child care facilities projects reserve funds and appropri-
12 ations.
13 8. Bonds and notes as legal investments.
14 9. Exemption from taxation of property and income.
15 10. Exemption from taxation of notes and bonds.
16 11. Agreement with the state.
17 12. State's right to require redemption of bonds.
18 13. Remedies of noteholders and bondholders.
19 14. Monies of the agency.
20 15. Assistance by state officers, departments, boards and
21 commissions.
22 16. Annual report.
23 17. Bond reserve insurance fund.
24 18. Act not affected if in part unconstitutional.

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

LBD06011-01-1

1 19. Inconsistent provisions in other laws superseded.

2 Section 1. Short title. This act shall be known and may be cited as
3 the "New York state child care facilities finance agency act".

4 S 2. Declaration of policy and statement of purposes. The availability
5 of child care for the inhabitants of the state are matters of public
6 concern. In furtherance of this purpose, it is the policy of the state
7 to make available child care services at a reasonable cost by the
8 private and public sectors in modern child care facilities accessible to
9 the communities to be served.

10 The legislature has heretofore found that a serious shortage of child
11 care services exists in many communities throughout the state; that many
12 child care facilities throughout the state cannot financially provide
13 affordable child care services to people who are in need of their
14 services, that such a shortage of affordable child care services deny to
15 the people of the state the benefits of child care of the highest quali-
16 ty and that affordable child care services are an essential need to the
17 state's population. The legislature has heretofore found and declared
18 that the accomplishment of these purposes cannot be readily achieved by
19 the ordinary unaided operation of private enterprise and to this end has
20 constituted and empowered the New York state finance housing agency, a
21 multi-purpose corporate government agency of the state, to obtain funds
22 through the issuance of its notes and bonds to finance the construction,
23 acquisition, reconstruction and improvement of child care facilities in
24 addition to issuing its notes and bonds to carry out other program
25 responsibilities which touch on the need for affordable and accessible
26 child care services for the vast majority of the state's residents.

27 In order to permit an acceleration in the implementation of affordable
28 and accessible child care services in areas where the public need
29 remains urgent, without jeopardizing the orderly marketing by the New
30 York state housing finance agency of its notes and bonds for other
31 program purposes, it is hereby declared that a separate corporate
32 governmental agency, to be known as the "New York child care facilities
33 finance agency", should be created as a single purpose agency to act in
34 concert with the New York state housing finance agency and to devote its
35 entire energy and resources to the provision of additional funds for the
36 construction of child care facilities by any entity or organization
37 deemed appropriate by the agency.

38 In this manner, the broadest possible base of investment by the great-
39 est number of the general public may be had and the initiative and
40 strength of our private enterprise economy may most readily be harnessed
41 for the benefit of the people of the state.

42 S 3. Definitions. As used in this act, unless a different meaning
43 clearly appears from the context:

44 1. "Agency" shall mean the corporate governmental agency created by
45 section four of this act.

46 2. "Amortized value" means, when used with respect to securities
47 purchased at a premium above or a discount below par, the value as of
48 any given date obtained by dividing the total amount of the premium or
49 discount at which such securities were purchased by the number of days
50 remaining to maturity on such securities at the time of such purchase
51 and by multiplying the amount so calculated by the number of days having
52 passed since the date of such purchase; and (a) in the case of securi-
53 ties purchased at a premium, by deducting the product thus obtained from
54 the purchase price, and (b) in the case of securities purchased at a
55 discount, by adding the product thus obtained to the purchase price.

- 1 3. "Bonds" and "notes" shall mean bonds and notes, respectively,
2 issued by the agency pursuant to this act.
- 3 4. "Child care project bonds" shall mean bonds and notes, respective-
4 ly, issued by the agency for the purpose of making mortgage loans to
5 eligible borrowers.
- 6 5. "Commissioner" shall mean the New York state commissioner of the
7 office of children and family services.
- 8 6. "Department" shall mean the office of children and family services
9 within the New York state department of family assistance.
- 10 7. "Eligible borrower" shall mean any entity or organization whose
11 project shall meet all the licensing requirements imposed pursuant to
12 the social services law and the rules and regulations promulgated there-
13 under.
- 14 8. "Mortgage loan" shall mean a loan made by the agency to an eligible
15 borrower in an amount not to exceed the total project cost and secured
16 by a first mortgage lien on the real property of which the child care
17 project consists and the personal property attached to or used in
18 connection with the construction, acquisition, reconstruction, rehabili-
19 tation, improvement or operation of the project. Such loan may be
20 further secured by such a lien upon other real property owned by the
21 eligible borrower. Notwithstanding the foregoing provisions of this
22 subdivision or any other provisions of this act to the contrary, any
23 personal property may be excluded from the lien of the mortgage provided
24 (a) the commissioner finds that such property is not essential for the
25 rendition of child care services, (b) the agency consents to such exclu-
26 sion.
- 27 The term "mortgage loan" shall also mean and include a loan made by
28 the agency to any entity or organization deemed appropriate by the agen-
29 cy not to exceed ninety-five per centum of the child care project cost
30 and secured by a first mortgage lien on the real property of which the
31 child care project consists and the personal property attached to or
32 used in connection with the construction, acquisition, reconstruction,
33 rehabilitation, improvement, or operation of the child care project.
34 Notwithstanding the foregoing provisions of this subdivision or any
35 other provision of this section to the contrary, any personal property
36 may be excluded from lien of the mortgage provided (a) the commissioner
37 finds that such property is not essential for the child care project,
38 and (b) the agency consents to such exclusion.
- 39 9. "Bond reserve insurance fund" shall mean the fund created by
40 section seventeen of this act.
- 41 S 4. New York state child care facilities finance agency. 1. There is
42 hereby created the New York state child care facilities finance agency.
43 The agency shall be a corporate governmental agency constituting a
44 public benefit corporation. Its membership shall consist of the commis-
45 sioner of taxation and finance, the commissioner of the office of chil-
46 dren and family services, the director of the budget, the chair of the
47 New York state housing finance agency and three members to be appointed
48 by the governor with the advice and consent of the senate. The members
49 first appointed by the governor shall serve for terms ending two, four
50 and six years, respectively, from January first next succeeding their
51 appointment. Their successors shall serve for terms of six years each.
52 Members shall continue in office until their successors have been
53 appointed and qualified. In the event of a vacancy occurring in the
54 office of any member by death, resignation or otherwise, the governor
55 shall appoint a successor with the advice and consent of the senate to
56 serve for the balance of the unexpired term. The provisions of section

1 39 of the public officers law shall apply to such members. The commis-
2 sioner of the office of children and family services shall serve as
3 chair of the agency.

4 2. The powers of the agency shall be vested in and exercised by no
5 less than four of the members then in office. The commissioner of taxa-
6 tion and finance, the commissioner of the office of children and family
7 services and the director of the budget each may appoint a person from
8 their respective department, office or division to represent such
9 member, respectively, at all meetings of the agency from which such
10 member may be absent. Any such representative so designated shall have
11 the power to attend and to vote at any meeting of the agency from which
12 the member so designating him or her as a representative is absent with
13 the same force and effect as if the member designating him or her were
14 present and voting. Such designation shall be by written notice filed
15 with the chair of the agency by each of the said members. The desig-
16 nation of such persons shall continue until revoked at any time by writ-
17 ten notice to the chair by the respective member making the designation.
18 Such designation shall not be deemed to limit the power of the appoint-
19 ing member to attend and vote at any meeting of the agency.

20 3. The members shall serve without salary, but each member shall be
21 entitled to reimbursement for his or her actual and necessary expenses
22 incurred in the performance of his or her official duties, and, except
23 in the case of the commissioner of taxation and finance, the commission-
24 er of the office of children and family services and the director of the
25 budget, a per diem allowance of one hundred dollars when rendering
26 services as such member, provided that the aggregate of such per diem
27 allowance to any one member in any one fiscal year shall not exceed the
28 sum of five thousand dollars.

29 4. Such members, except as otherwise provided by law, may engage in
30 private employment, or in a profession or business. The agency, its
31 members, officers and employees shall be subject to the provisions of
32 sections 73 and 74 of the public officers law.

33 5. The chief executive officer of the agency shall be the executive
34 director of the New York state housing finance agency.

35 6. Notwithstanding any inconsistent provisions of law, general,
36 special or local, no officer or employee of the state or of any civil
37 division thereof shall be deemed to have forfeited or shall forfeit his
38 or her office or employment by reason of his or her acceptance of
39 membership on the agency created by this section; provided however, that
40 a member who holds such other public office or employment shall receive
41 no additional compensation or allowance for services rendered pursuant
42 to this act, but shall be entitled to reimbursement for his or her actu-
43 al and necessary expenses incurred in the performance of such services.

44 7. The governor may remove any member appointed by him or her for
45 inefficiency, neglect of duty or misconduct in office after giving him
46 or her a copy of the charges against him or her and an opportunity to be
47 heard, in person or by counsel in his or her defense, upon not less than
48 ten days' notice. If any such member shall be removed, the governor
49 shall file in the office of the department of state a complete statement
50 of charges made against such member and his or her findings thereon,
51 together with a complete record of the proceeding.

52 8. The agency and its corporate existence shall continue until termi-
53 nated by law, provided, however, that no such law shall take effect so
54 long as the agency shall have bonds, notes and other obligations
55 outstanding, unless adequate provision has been made for the payment

1 thereof. Upon termination of the existence of the agency, all its rights
2 and properties shall pass to and be vested in the state.

3 9. A majority of the members of the agency then in office shall
4 constitute a quorum for the transaction of any business or the exercise
5 of any power or function of the agency. The agency may delegate to one
6 or more of its members, or its officers, agents or employees, such
7 powers and duties as it may deem proper.

8 S 5. Powers of the agency. Except as otherwise limited by this act,
9 the agency shall have power:

10 1. To sue and be sued;

11 2. To have a seal and alter the same at pleasure;

12 3. To make and execute contracts and all other instruments necessary
13 or convenient for the exercise of its powers and functions under this
14 act;

15 4. To make and alter by-laws for its organization and internal manage-
16 ment;

17 5. To acquire, hold and dispose of personal property for its corporate
18 purposes;

19 6. To appoint officers, agents and employees, prescribe their duties
20 and qualifications and fix their compensation;

21 7. To borrow money and issue negotiable notes, bonds or other obli-
22 gations and to provide for the rights of the holders thereof;

23 8. To invest any funds held in reserve or sinking funds, or any monies
24 not required for immediate use or disbursement, at the discretion of the
25 agency, in obligations of the state or the United States government or
26 obligations the principal and interest of which are guaranteed by the
27 state or the United States government, or in any other obligations in
28 which the comptroller of the state of New York is authorized to invest
29 pursuant to section 98 of the state finance law;

30 9. Subject to the approval of the agency, to make mortgage loans to
31 eligible borrowers and to undertake commitments to make any such mort-
32 gage loans;

33 10. Subject to the approval of the commissioner of the agency, to
34 sell, at public or private sale, any mortgage or other obligation secur-
35 ing a mortgage loan made by the agency;

36 11. In connection with the making of mortgage loans and commitments
37 therefor to non-profit hospital corporations and non-profit medical
38 corporations constituting eligible borrowers or nursing home companies,
39 to make and collect from such corporations and companies such fees and
40 charges, including but not limited to reimbursement of all costs of
41 financing by the agency, service charges and insurance premiums, as the
42 agency shall determine to be reasonable;

43 12. In connection with any property on which it has made a mortgage
44 loan, to foreclose on any such property or commence any action to
45 protect or enforce any right conferred upon it by any law, mortgage
46 contract or other agreement, and to bid for and purchase such property
47 at any foreclosure or at any other sale, or acquire or take possession
48 of any such property; and in such event the agency may complete, admin-
49 ister, pay the principal of and interest on any obligations incurred in
50 connection with such property, dispose of, and otherwise deal with, such
51 property, in such manner as may be necessary or desirable to protect the
52 interests of the agency therein;

53 13. To procure insurance against any loss in connection with its
54 property and other assets (including mortgages and mortgage loans) in
55 such amounts, and from such insurers, as it deems desirable;

1 14. To accept any gifts or grants or loans of funds or property or
2 financial or other aid in any form from the federal government or any
3 agency or instrumentality thereof or from the state or from any other
4 source and to comply, subject to the provisions of this act, with the
5 terms and conditions thereof;

6 15. To engage the services of private consultants on a contract basis
7 for rendering professional and technical assistance and advice;

8 16. To enter into a contract with the New York state housing finance
9 agency to market and service any agency bonds and notes approved by the
10 agency and to contract with the New York state housing finance agency to
11 render such other services as the agency may request, including but not
12 limited to the use of the premises, personnel and personal property of
13 the New York state housing finance agency, and to provide for reimburse-
14 ment to the New York state housing finance agency from the agency for
15 any expenses necessarily incurred by the New York state housing finance
16 agency in carrying out the terms of any such contract. Any such
17 contract shall be subject to the separate approval of the director of
18 the budget;

19 17. Subject to the approval of the agency, to acquire by purchase
20 from the New York state housing finance agency any mortgage or other
21 obligation securing a loan made by the New York state housing finance
22 agency to an eligible borrower and to sell same at public or private
23 sale;

24 18. To acquire by purchase from the New York state housing finance
25 agency its right, title and interest in real property, leaseholds and
26 subleaseholds relating to the municipal health facilities improvement
27 program;

28 19. To do any and all things necessary or convenient to carry out its
29 purposes and exercise the powers expressly given and granted in this
30 act.

31 S 6. Bonds and notes of the agency. 1. (a) The agency shall have power
32 and is hereby authorized from time to time to issue its negotiable bonds
33 and notes in conformity with applicable provisions of the uniform
34 commercial code in such principal amount as, in the opinion of the agen-
35 cy, shall be necessary to provide sufficient funds for achieving its
36 corporate purposes, including the making of mortgage loans and the
37 construction, acquisition, reconstruction, rehabilitation or improvement
38 of child care facilities, the payment of interest on bonds and notes of
39 the agency, establishment of reserves to secure such bonds and notes,
40 and all other expenditures of the agency incident to and necessary or
41 convenient to carry out its corporate purposes and powers;

42 (b) The agency shall have power, from time to time, to issue renewal
43 notes, to issue bonds to pay notes and whenever it deem refunding expe-
44 dient, to refund any bonds by the issuance of new bonds, whether the
45 bonds to be refunded have or have not matured, and to issue bonds partly
46 to refund bonds then outstanding and partly for any other purpose. The
47 refunding bonds shall be sold and the proceeds applied to the purchase,
48 redemption or payment of the bonds to be refunded;

49 (c) Except as may otherwise be expressly provided by the agency, every
50 issue if its notes or bonds shall be general obligations of the agency
51 payable out of any revenues or monies of the agency, subject only to any
52 agreements with the holders of particular notes or bonds pledging any
53 particular receipts or revenues.

54 2. The notes and bonds shall be authorized by resolution of the
55 members, shall bear such date or dates, and shall mature at such time or
56 times, in the case of any such note, or any renewals thereof, issued for

1 achieving its corporate purposes other than the making of mortgage
2 loans, not exceeding five years, from the date of issue of such original
3 note, and in the case of any such note, or any renewals thereof, issued
4 for the purpose of making mortgage loans, not exceeding seven years,
5 from the date of issue of such original note, and in the case of any
6 such bond not exceeding fifty years from the date of issue, as such
7 resolution or resolutions may provide. The notes and bonds shall bear
8 interest at such rate or rates, be in such denominations, be in such
9 form, either coupon or registered, carry such registration privileges,
10 be executed in such manner, be payable in such medium of payment, at
11 such place or places and be subject to such terms of redemption as such
12 resolution or resolutions may provide. The notes and bonds of the agency
13 may be sold by the agency, at public or private sale, at such price or
14 prices as the agency shall determine. No notes or bonds of the agency
15 may be sold by the agency at private sale, however, unless such sale and
16 the terms thereof have been approved in writing by (a) the comptroller,
17 where such sale is not to the comptroller, or (b) the director of the
18 budget, where such sale is to the comptroller.

19 3. Any resolution or resolutions authorizing any notes or bonds or any
20 issue thereof may contain provisions, which shall be a part of the
21 contract with the holders thereof, as to:

22 (a) pledging all or any part of the fees and charges made or received
23 by the agency, and all or any part of the monies received in payment of
24 mortgage loans and interest thereon, and any other monies received or to
25 be received, to secure the payment of the child care facility project
26 bonds or of any issue thereof, subject to such agreement with bondhold-
27 ers or noteholders as may then exist;

28 (b) pledging all or any part of the assets of the agency, including
29 mortgages and obligations securing the same, to secure the payment of
30 the child care facility project bonds, subject to such agreements with
31 bondholders or noteholders as may then exist, provided that no resol-
32 ution or resolutions of the agency authorizing bonds and notes shall (i)
33 pledge all or any portion of the rentals paid to the agency with respect
34 to child care facilities financed with the proceeds of child care facil-
35 ities bonds or notes, or (ii) pledge any other assets, monies or
36 accounts pledged to the agency as security for the payment of rentals
37 with respect to child care facilities financed with the proceeds of
38 child care facilities bonds or notes;

39 (c) the use and disposition of the gross income from mortgages owned
40 by the agency and payment of principal of mortgages owned by the agency;

41 (d) pledging all or any part of the rentals paid to the agency with
42 respect to child care facilities financed with the proceeds of child
43 care facilities bonds or notes or any other assets, monies or accounts
44 pledged or assigned to the agency as security for the payment of such
45 rentals, all subject to any agreement with noteholders or bondholders as
46 may then exist and provided that no resolution or resolutions authoriz-
47 ing child care facilities bonds and notes shall (i) pledge all or any
48 part of the fees and charges made or received by the agency pursuant to
49 subdivision eleven of section five of this act in connection with the
50 making of mortgage loans or commitments therefor, or all or any part of
51 the monies received in payment of such mortgage loans and interest ther-
52 eon, or (ii) pledge all or any part of the mortgages of the agency or
53 obligations securing the same, or (iii) provide as to the use and dispo-
54 sition of the gross income from mortgages owned by the agency or as to
55 the payment of principal of mortgages owned by the agency;

1 (e) the setting aside of reserves or sinking funds and the regulation
2 and disposition thereof;

3 (f) limitations on the purpose to which the proceeds of sale of notes
4 or bonds may be applied and pledging such proceeds to secure the payment
5 of the notes or bonds or of any issue thereof;

6 (g) limitations on the issuance of additional notes or bonds; the
7 terms upon which additional notes or bonds may be issued and secured;
8 the refunding of outstanding or other notes or bonds;

9 (h) the procedure, if any, by which the terms of any contract with
10 noteholders or bondholders may be amended or abrogated, the amount of
11 notes or bonds the holders of which must consent thereto, and the manner
12 in which such consent may be given;

13 (i) limitations on the amount of monies to be expended by the agency
14 for operating, administrative or other expenses of the agency;

15 (j) vesting in a trustee or trustees such property, rights, powers and
16 duties in trust as the agency may determine, which may include any or
17 all of the rights, powers and duties of the trustee appointed by the
18 bondholders pursuant to this act, and limiting or abrogating the right
19 of the bondholders to appoint a trustee under this act or limiting the
20 right, powers and duties of such trustee;

21 (k) any other matters, of like or different character, which in any
22 way affect the security or protection of the notes or bonds.

23 4. It is the intention hereof that any pledge made by the agency shall
24 be valid and binding from the time when the pledge is made; that the
25 monies or property so pledged and thereafter received by the agency
26 shall immediately be subject to the lien of such pledge without any
27 physical delivery thereof or further act; and that the lien of any such
28 pledge shall be valid and binding as against all parties having claims
29 of any kind in tort, contract or otherwise against the agency, irrespec-
30 tive of whether such parties have notice thereof. Neither the resolution
31 nor any other instrument by which a pledge is created need be recorded.

32 5. Neither the members of the agency nor any person executing the
33 notes or bonds shall be liable personally on the notes or bonds or be
34 subject to any personal liability or accountability by reason of the
35 issuance thereof.

36 6. The agency, subject to such agreements with noteholders or bond-
37 holders as may then exist, shall have power out of any funds available
38 therefor to purchase notes or bonds of the agency, which shall thereupon
39 be cancelled, at a price not exceeding (a) if the notes or bonds are
40 then redeemable, the redemption price then applicable plus accrued
41 interest to the next interest payment date thereon, or (b) if the notes
42 or bonds are not then redeemable, the redemption price applicable on the
43 first date after such purchase upon which the notes or bonds become
44 subject to redemption plus accrued interest to such date.

45 7. The state shall not be liable on notes or bonds of the agency and
46 such notes and bonds shall not be a debt of the state, and such notes
47 and bonds shall contain on the face thereof a statement to such effect.

48 S 7. Child care facilities projects reserve funds and appropriations.

49 1. (a) For the purposes of the issuance by the agency of child care
50 facility project bonds, the term "child care facility capital reserve
51 fund requirement" shall mean, as of any particular date of computation,
52 an amount of money equal to the greatest of the respective amounts, for
53 the then current or any succeeding calendar year, of annual debt service
54 payments of the agency, such annual debt service payments for any calen-
55 dar year being an amount of money equal to the aggregate of (i) all
56 interest payable during such calendar year on all child care facility

1 project bonds of the agency then outstanding on said date of computa-
2 tion, plus (ii) the principal amount of all child care facility project
3 bonds of the agency then outstanding on said date of computation which
4 mature during such calendar year, plus (iii) the amount of all sinking
5 fund payments payable during such calendar year with respect to all
6 child care facility project bonds of the agency outstanding on said date
7 of computation; and the term "sinking fund payment" shall mean the
8 amount of money specified in the resolution authorizing term bonds as
9 payable into a sinking fund for the amortization of such term bonds. The
10 agency shall create and establish a special fund to be known as the
11 child care facility capital reserve fund and may pay into such reserve
12 fund (1) any monies appropriated and made available by the state for the
13 purposes of such fund, (2) any proceeds of sale of child care facility
14 project notes or bonds, to the extent provided in the resolution of the
15 agency authorizing the issuance thereof, and (3) any other monies which
16 may be made available to the agency for the purposes of such fund from
17 any other source or sources. The monies held in or credited to the child
18 care facility capital reserve fund established under this section,
19 except as hereinafter provided, shall be used solely for the payment of
20 the principal of child care facility project bonds of the agency secured
21 by such reserve fund, as the same mature, sinking fund payments, the
22 purchase of such child care facility project bonds of the agency, the
23 payment of interest on such child care facility projects bonds of the
24 agency, or the payment of any redemption premium required to be paid
25 when such bonds are redeemed prior to maturity; provided, however, that
26 monies in such fund shall not be withdrawn therefrom at any time in such
27 amount as would reduce the amount of such fund to less than the child
28 care facility capital reserve fund requirement, except for the purpose
29 of paying principal and interest on the child care facility project
30 bonds of the agency secured by such reserve fund maturing and becoming
31 due and any sinking fund payments and for the payment of which other
32 monies of the agency are not available. Any income or interest earned
33 by, or increment to, the child care facility capital reserve fund due to
34 the investment thereof may be transferred to any other fund or account
35 of the agency to the extent it does not reduce the amount of the child
36 care facility capital reserve fund below the child care facility capi-
37 tal reserve fund requirement.

38 (b) The agency shall not issue child care facility project bonds and
39 notes in an aggregate principal amount exceeding two billion dollars,
40 excluding child care facility project bonds and child care facility
41 notes issued to refund outstanding child care facility project bonds and
42 notes. The agency shall not issue child care facility project bonds at
43 any time secured by the child care facility capital reserve fund if upon
44 issuance, the amount in the child care facility capital reserve fund
45 will be less than the child care facility capital reserve fund require-
46 ment, unless the agency, at the time of issuance of such bonds, shall
47 deposit in such reserve fund from the proceeds of the bonds so to be
48 issued, or otherwise, an amount which together with the amount then in
49 such reserve fund, will be not less than the child care facility capital
50 reserve fund requirement.

51 (c) To assure the continued operation and solvency of the agency for
52 the carrying out of the public purposes of this act, provision is made
53 in paragraph (a) of this subdivision for the accumulation in the child
54 care facility capital reserve fund of an amount equal to the child care
55 facility capital reserve fund requirement. In order further to assure
56 the maintenance of the child care facility capital reserve fund, there

1 shall be annually apportioned and paid to the agency for deposit in the
2 child care facility capital reserve fund such sum, if any, as shall be
3 certified by the chairman of the agency to the governor and director of
4 the budget as necessary to restore such reserve fund to an amount equal
5 to the child care facility capital reserve fund requirement. The chair
6 of the agency shall annually, on or before December first, make and
7 deliver to the governor and director of the budget his or her certifi-
8 cate stating the sums, if any, required to restore the child care
9 facility capital reserve fund to the amount aforesaid and the sums so
10 certified, if any, shall be apportioned and paid to the agency during
11 the then current state fiscal year. The principal amount of bonds
12 secured by the child care facility capital reserve fund to which state
13 funds are apportionable pursuant to this paragraph shall be limited to
14 the total amount of bonds and notes outstanding on the effective date of
15 this act, plus the total amount of bonds and notes contracted after the
16 effective date of this act to finance projects in progress on the effec-
17 tive date of this act as determined by the New York state public author-
18 ities control board created pursuant to section 50 of the public author-
19 ities law whose affirmative determination shall be conclusive as to all
20 matters of law and fact solely for the purposes of the limitations
21 contained in this paragraph, but in no event shall the total amount of
22 bonds so secured by such a capital reserve fund or funds exceed two
23 hundred forty million dollars, excluding bonds issued to refund such
24 outstanding bonds until the date of redemption of such outstanding
25 bonds. As outstanding bonds so secured are paid, the amount so secured
26 shall be reduced accordingly but the redemption of such outstanding
27 bonds from the proceeds of refunding bonds shall not reduce the amount
28 so secured.

29 (d) In computing the child care facility capital reserve fund for the
30 purposes of this section, securities in which all or a portion of such
31 reserve fund shall be invested shall be valued at par if purchased at
32 par, or if purchased at other than par, at amortized value.

33 2. The agency shall create and establish one or more special funds
34 (herein referred to as child care facility reserve funds) and shall, to
35 the extent provided in the applicable bond resolution of the agency
36 authorizing the issuance of child care facility project bonds, pay into
37 any such fund the fees and charges collected by the agency pursuant to
38 subdivision eleven of section five of this act and any monies which the
39 agency shall transfer from the child care facility capital reserve fund
40 pursuant to the provisions of paragraph (a) of subdivision one of this
41 section. Such monies and any other monies paid into a child care facili-
42 ty general reserve fund may, in the discretion of the agency, but
43 subject to agreements with bondholders and noteholders, be used by the
44 agency (a) for the repayment of advances from the state in accordance
45 with the provisions of repayment agreements between the agency and the
46 director of the budget, (b) to reimburse the department the reasonable
47 costs of the services performed by the commissioner and the department
48 pursuant to this act, (c) to pay all costs, expenses and charges of
49 financing, including fees and expenses of trustees and paying agents,
50 (d) for transfers to the child care facility capital reserve fund, (e)
51 for the payment of principal and interest on child care facility project
52 bonds and project notes issued by the agency when the same shall become
53 due whether at maturity or on call for redemption and for the payment of
54 any redemption premium required to be paid where such child care facili-
55 ty project bonds and notes are redeemed prior to their stated maturities
56 and any sinking fund payments, and to purchase child care facility

1 project bonds or notes issued by the agency, or (f) for such other
2 corporate purposes of the agency as the agency in its discretion shall
3 determine and provide.

4 S 8. Bonds and notes as legal investments. The bonds and notes of the
5 agency are hereby made securities in which all public officers and
6 bodies of this state and all municipalities and municipal subdivisions,
7 all insurance companies and associations, and other persons carrying on
8 an insurance business, all banks, bankers, trust companies, savings
9 banks and saving associations, including savings and loan associations,
10 building and loan associations, investment companies and other persons
11 carrying on a banking business, all administrators, guardians, execu-
12 tors, trustees and other fiduciaries, and all other persons whatsoever
13 who are now or may hereafter be authorized to invest in bonds or other
14 obligations of the state, may properly and legally invest funds, includ-
15 ing capital, in their control and belonging to them.

16 S 9. Exemption from taxation of property and income. The property of
17 the agency and its income and operations shall be exempt from taxation.

18 S 10. Exemption from taxation of notes and bonds. It is hereby deter-
19 mined that the creation of the agency is in all respects for the benefit
20 of the people of the state and for the improvement of their health,
21 safety, welfare, comfort and security, and that said purposes are public
22 purposes and that the agency will be performing an essential govern-
23 mental function in the exercise of the powers conferred upon it by this
24 act. The state covenants with the purchasers and all subsequent holders
25 and transferees of notes and bonds issued by the agency, in consider-
26 ation of the acceptance of and payment for the notes and bonds, that the
27 notes and bonds of the agency, issued pursuant to this act and the
28 income therefrom and all its fees, charges, gifts, grants, revenues,
29 receipts, and other monies received or to be received, pledged to pay or
30 secure the payment of such notes or bonds shall at all times be free
31 from taxation, except for estate and gift taxes and taxes on transfers.

32 S 11. Agreement with the state. The state does hereby pledge to and
33 agree with the holders of any notes or bonds issued under this act, that
34 the state will not limit or alter the rights hereby vested in the agency
35 to fulfill the terms of any agreements made with the holders thereof, or
36 in any way impair the rights and remedies of such holders until such
37 notes or bonds, together with the interest thereon, with interest on any
38 unpaid installments of interest, and all costs and expenses in
39 connection with any action or proceeding by or on behalf of such hold-
40 ers, are fully met and discharged. The agency is authorized to include
41 this pledge and agreement of the state in any agreement with the holders
42 of such notes or bonds.

43 S 12. State's right to require redemption of bonds. Notwithstanding
44 and in addition to any provisions for the redemption of bonds which may
45 be contained in any contract with the holders of the bonds, the state
46 may, upon furnishing sufficient funds therefor, require the agency to
47 redeem, prior to maturity, as a whole, any issue of bonds on any inter-
48 est payment date not less than twenty years after the date of the bonds
49 of such issue at one hundred five per centum of their face value and
50 accrued interest or at such lower redemption price as may be provided in
51 the bonds in case of the redemption thereof as a whole on the redemption
52 date. Notice of such redemption shall be published in at least two
53 newspapers publishing and circulating respectively in the cities of
54 Albany and New York at least twice, the first publication to be at least
55 thirty days before the date of redemption.

1 S 13. Remedies of noteholders and bondholders. 1. In the event that
2 the agency shall default in the payment of principal of or interest on
3 any issue of notes or bonds after the same shall become due, whether at
4 maturity or upon call for redemption, and such default shall continue
5 for a period of thirty days, or in the event that the agency shall fail
6 or refuse to comply with the provisions of this act, or shall default in
7 any agreement made with the holders of any issue of notes or bonds, the
8 holders of twenty-five per centum in aggregate principal amount of the
9 notes or bonds of such issue then outstanding, by instrument or instru-
10 ments filed in the office of the clerk of the county of Albany and
11 approved or acknowledged in the same manner as a deed to be recorded,
12 may appoint a trustee to represent the holders of such notes or bonds
13 for the purposes herein provided.

14 2. Such trustee may, and upon written request of the holders of twen-
15 ty-five per centum in principal amount of such notes or bonds then
16 outstanding shall, in his, her or its own name:

17 (a) by suit, action or proceeding in accordance with the civil prac-
18 tice law and rules, enforce all rights of the noteholders or bondhold-
19 ers, including the right to require the agency to collect fees and
20 charges and interest and amortization payment on mortgage loans made by
21 it adequate to carry out any agreement as to, or pledge of, such fees
22 and charges and interest and amortization payments on such mortgages,
23 and other properties and to require the agency to carry out any other
24 agreements with the holders of such notes or bonds and to perform its
25 duties under this act;

26 (b) bring suit upon such notes or bonds;

27 (c) by action or suit, require the agency to account as if it were the
28 trustee of an express trust for the holders of such notes or bonds;

29 (d) by action or suit, enjoin any acts or things which may be unlawful
30 or in violation of the rights of the holders of such notes or bonds;

31 (e) declare all such notes or bonds due and payable, and if all
32 defaults shall be made good, then, with the consent of the holders of
33 twenty-five per centum of the principal amount of such notes or bonds
34 then outstanding, to annul such declaration and its consequences.

35 3. Such trustee shall in addition to the foregoing have and possess
36 all of the powers necessary or appropriate for the exercise of any func-
37 tions specifically set forth herein or incident to the general represen-
38 tation of bondholders or noteholders in the enforcement and protection
39 of their rights.

40 4. The supreme court shall have jurisdiction of any suit, action or
41 proceeding by the trustee on behalf of such noteholders or bondholders.
42 The venue of any such suit, action or proceeding shall be laid in the
43 county of Albany.

44 5. Before declaring due and payable the principal of notes or bonds
45 issued in connection with any mortgage or other obligations securing a
46 mortgage loan made by the agency, the trustee shall first give thirty
47 days' notice in writing to the governor, to the agency, to the state
48 commissioner of health and to the attorney general of the state.

49 S 14. Monies of the agency. 1. All monies of the agency, except as
50 otherwise authorized or provided in this act, shall be paid to the
51 commissioner of taxation and finance as agent of the agency, who shall
52 not commingle such monies with any other monies. Such monies shall be
53 deposited in a separate bank account or accounts. The monies in such
54 accounts shall be paid out on checks signed by the commissioner of taxa-
55 tion and finance on requisition of the chair of the agency or of such
56 other officer or employee or officers or employees as the agency shall

1 authorize to make such requisition. All deposits of such monies shall,
2 if required by the commissioner of taxation and finance or the agency,
3 be secured by obligations of the United States or of the state of a
4 market value equal at all times to the amount of the deposit and all
5 banks and trust companies are authorized to give such security for such
6 deposits.

7 Notwithstanding the provisions of this section, the agency shall have
8 power, subject to the approval of the commissioner of taxation and
9 finance, to contract with the holders of any of its notes or bonds, as
10 to the custody, collection, securing, investment and payment of any
11 monies of the agency, of any monies held in trust or otherwise for the
12 payment of notes or bonds, and to carry out such contract. Monies held
13 in trust or otherwise for the payment of notes or bonds or in any way to
14 secure notes or bonds and deposits of such monies may be secured in the
15 same manner as monies of the agency, and all banks and trust companies
16 are authorized to give such security for such deposits.

17 2. Subject to agreements with noteholders and bondholders and the
18 approval of the comptroller, the agency shall prescribe a system of
19 accounts.

20 3. The comptroller, or his or her legally authorized representative,
21 is hereby authorized and empowered from time to time to examine the
22 books and accounts of the agency including its receipts, disbursements,
23 contracts, reserve funds, sinking funds, investments, and any other
24 matters relating to its financial standing. Such an examination shall be
25 conducted by the comptroller at least once in every five years; the
26 comptroller is authorized, however, to accept from the agency, in lieu
27 of such an examination, an external examination of its books and
28 accounts made at the request of the agency.

29 4. The agency shall submit to the governor, chair of the senate
30 finance committee, chair of the assembly ways and means committee and
31 the comptroller, within thirty days of the receipt thereof by the agen-
32 cy, a copy of the report of every external examination of the books and
33 accounts of the agency other than copies of the reports of such examina-
34 tions made by the comptroller.

35 S 15. Assistance by state officers, departments, boards and commis-
36 sions. 1. The department of audit and control, department of law, office
37 of children and family services, and all other state officers, depart-
38 ments, boards, divisions and commissions may render such services to the
39 agency within their respective functions as may be requested by the
40 agency.

41 2. The state commissioner of health and the state department of health
42 are hereby designated to act for and in behalf of the agency in servic-
43 ing the mortgage loans of the agency, and shall perform such functions
44 and services in connection with the making, servicing and collection of
45 such loans as shall be requested by the agency. The agency shall pay to
46 such department from any monies of the agency available for such
47 purpose, such amounts as are necessary to reimburse such department for
48 the reasonable cost of the services performed by such commissioner and
49 department pursuant to this section.

50 S 16. Annual report. The agency shall submit to the governor, the
51 chair of the senate finance committee, the chair of the assembly ways
52 and means committee, the comptroller and the director of the budget
53 within one hundred eighty days after the end of its fiscal year, a
54 complete and detailed report setting forth: (1) its operations and
55 accomplishments; (2) its receipts and expenditures during such fiscal
56 year in accordance with the categories or classifications established by

1 the agency for its operating and capital outlay purposes, including a
2 listing of all private consultants engaged by the agency on a contract
3 basis and a statement of the total amount paid to each such private
4 consultant; (3) its assets and liabilities at the end of its fiscal
5 year, including a schedule of its mortgage loans and commitments and the
6 status of reserve, special or other funds; and (4) a schedule of its
7 bonds and notes outstanding at the end of its fiscal year, together with
8 a statement of the amounts redeemed and incurred during such fiscal
9 year.

10 S 17. Bond reserve insurance fund. The agency shall create and estab-
11 lish a special fund, to be known as the bond reserve insurance fund and
12 shall pay into such fund all monies appropriated and made available by
13 the state for the purposes of such fund and any other monies which may
14 be made available to the agency for the purposes of such fund from any
15 other source or sources. All monies held in the bond reserve insurance
16 fund shall be used by the agency to meet the agency's obligation to
17 repay principal and interest on its outstanding bonds solely to the
18 extent that all other revenues of the agency available for such purpose
19 are not sufficient to meet such obligations of the agency. Any income or
20 interest earned by, or increment to the bond reserve insurance fund may
21 be used for authorized purposes including, but not limited to, the addi-
22 tion of such income or interest earned, or increment to the monies held
23 in such fund for the purposes herein provided, or the repayment of
24 appropriation expenditures made to the credit of such fund.

25 S 18. Act not affected if in part unconstitutional. If any section,
26 subdivision, paragraph, sentence, clause or provision of this act shall
27 be unconstitutional or be ineffective in whole or in part, to the extent
28 that it is not unconstitutional or ineffective, it shall be valid and
29 effective and no other section, subdivision, paragraph, sentence, clause
30 or provision shall on account thereof be deemed invalid or ineffective.

31 S 19. Inconsistent provisions in other laws superseded. Insofar as the
32 provisions of this act are inconsistent with the provisions of any other
33 law, general, special or local, the provisions of this act shall be
34 controlling.

35 S 2. This act shall take effect immediately.