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

6205

I N S E N A T E

January 12, 2012

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The state finance law is amended by adding a new section 16-a to read as follows:

S 16-A. INTEREST AND COLLECTION FEES ASSESSED ON DEBTS OWED BY THE STATE TO MUNICIPALITIES. 1. AS USED IN THIS SECTION: (A) "STATE" SHALL MEAN ANY STATE DEPARTMENT, BOARD, BUREAU, DIVISION, COMMISSION, COMMITTEE, PUBLIC AUTHORITY, PUBLIC BENEFIT CORPORATION, COUNCIL, OFFICE, OR OTHER GOVERNMENTAL ENTITY PERFORMING A GOVERNMENTAL OR PROPRIETARY FUNCTION FOR THE STATE; (B) "MUNICIPALITY" SHALL MEAN A COUNTY, TOWN, VILLAGE OR SCHOOL DISTRICT AND ANY DEPARTMENT, BOARD, BUREAU, DIVISION, COMMISSION, COMMITTEE, PUBLIC BENEFIT CORPORATION, COUNCIL, OFFICE OR OTHER GOVERNMENTAL ENTITY PERFORMING A GOVERNMENTAL OR PROPRIETARY FUNCTION FOR SUCH COUNTY, TOWN, VILLAGE OR SCHOOL DISTRICT; (C) "DEBT" SHALL MEAN ANY LIQUIDATED SUM DUE AND OWING ANY MUNICIPALITY BY THE STATE WHICH HAS ACCRUED PURSUANT TO LAW OR THROUGH CONTRACT SUBROGATION, TORT OR OTHER CAUSE OF ACTION, REGARDLESS OF WHETHER THERE IS AN OUTSTANDING JUDGMENT FOR THAT SUM; (D) "LIQUIDATED" SHALL MEAN AN AMOUNT WHICH IS FIXED OR CERTAIN OR CAPABLE OF BEING READILY CALCULATED, WHETHER OR NOT THE UNDERLYING LIABILITY OR AMOUNT OF THE DEBT IS DISPUTED; AND (E) "OUTSTANDING DEBT" SHALL MEAN THE AMOUNT SET FORTH IN THE BILLING INVOICE OR NOTICE MAILED TO THE STATE, TOGETHER WITH LATE PAYMENT CHARGES AND INTEREST, LESS ANY PAYMENTS MADE BY OR ON BEHALF OF THE DEBTOR.

2. FOR THE PURPOSES OF THIS SECTION, A MUNICIPALITY SHALL MAIL, OR OTHERWISE NOTIFY AS MAY BE PERMITTED OR REQUIRED BY CONTRACT BETWEEN THE MUNICIPALITY AND THE STATE, A DATED BILLING INVOICE OR NOTICE TO THE STATE ON OR ABOUT THE DAY IT IS DATED, AND RECEIPT BY THE DEBTOR OF A BILLING INVOICE OR NOTICE IS DEEMED TO HAVE OCCURRED FIVE DAYS AFTER ITS DATE.

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

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

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

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

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

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

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

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

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

10. EVERY MUNICIPALITY TO WHICH THIS SECTION IS APPLICABLE IS AUTHORIZED TO ENTER INTO WRITTEN AGREEMENTS WITH THE STATE UNDER WHICH THE STATE IS ALLOWED TO SATISFY LIABILITY FOR PAYMENT OF ANY DEBT, INCLUDING ANY INTEREST IMPOSED BY THIS SECTION ON THAT PORTION OF SUCH DEBT AS TO WHICH AN EXTENSION IS GRANTED, IN INSTALLMENT PAYMENTS IF THE MUNICIPALITY DETERMINES THAT SUCH AGREEMENT WILL FACILITATE COLLECTION OF SUCH LIABILITY.

11. FOR PURPOSES OF THIS SECTION, THE TIME OF BILLING SHALL BE TOLLED: (A) IF THE STATE SHALL NOTIFY THE MUNICIPALITY IN WRITING WITHIN THIRTY DAYS OF RECEIPT OF THE BILLING THAT SUCH BILLING REQUIRES SUBMISSION OF ADDITIONAL INFORMATION OR THE STATE OTHERWISE HAS OBJECTION TO THE FORM OR CONTENT OF SUCH BILLING REQUIRING CLARIFICATION, UNTIL SUCH TIME AS THE MUNICIPALITY SHALL RESPOND TO SUCH REQUEST FOR ADDITIONAL INFORMA-

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

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