

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

809

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. ADAMS -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to creating the New York title guaranty authority

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

1 Section 1. Article 10-D of the public authorities law is amended by
2 adding a new title 4 to read as follows:

3 TITLE 4
4 NEW YORK TITLE GUARANTY AUTHORITY

5 SECTION 3974. SHORT TITLE.
6 3975. NEW YORK TITLE GUARANTY AUTHORITY.
7 3976. ADMINISTRATION OF THE AUTHORITY.
8 3977. GENERAL POWERS OF THE AUTHORITY.
9 3978. SPECIAL POWERS OF THE AUTHORITY.
10 3979. NEW YORK TITLE GUARANTY FUND.
11 3980. PARTICIPATING ATTORNEYS.

12 S 3974. SHORT TITLE. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE
13 "NEW YORK TITLE GUARANTY AUTHORITY ACT".

14 S 3975. NEW YORK TITLE GUARANTY AUTHORITY. 1. THERE IS HEREBY CREATED
15 THE NEW YORK TITLE GUARANTY AUTHORITY, TO INITIATE AND OPERATE A PROGRAM
16 WHICH SHALL OFFER GUARANTIES OF REAL PROPERTY TITLES IN THIS STATE. THE
17 AUTHORITY SHALL BE A CORPORATE GOVERNMENTAL AGENCY AND INSTRUMENTALITY
18 OF THE STATE CONSTITUTING A PUBLIC BENEFIT CORPORATION.

19 2. IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE, THE AUTHORITY MAY
20 ISSUE BONDS ONLY TO FINANCE COSTS, INCLUDING THE FUNDING OF BONDS ISSUED
21 BY THE AUTHORITY TO FINANCE COSTS, AND FUND RESERVES TO SECURE SUCH
22 BONDS.

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

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1 3. THE AUTHORITY AND ITS CORPORATE EXISTENCE SHALL CONTINUE UNTIL
2 TERMINATED BY LAW, PROVIDED, HOWEVER, THAT NO SUCH TERMINATION SHALL
3 TAKE EFFECT SO LONG AS THE AUTHORITY SHALL HAVE BONDS OR OTHER OBLI-
4 GATIONS OUTSTANDING UNLESS ADEQUATE PROVISION HAS BEEN MADE FOR THE
5 PAYMENT THEREOF.

6 S 3976. ADMINISTRATION OF THE AUTHORITY. 1. THE AUTHORITY SHALL BE
7 ADMINISTERED BY SEVEN DIRECTORS APPOINTED BY THE GOVERNOR, OF WHOM TWO
8 MEMBERS SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE TEMPORARY
9 PRESIDENT OF THE SENATE AND TWO MEMBERS SHALL BE APPOINTED UPON THE
10 RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY. THE POWERS AS SET FORTH
11 IN THE BY-LAWS OF THE BOARD SHALL BE ESTABLISHED AND VESTED IN AND BE
12 EXERCISED BY THE MEMBERS OF THE AUTHORITY AT AN INITIAL MEETING DULY
13 CALLED AND HELD AND FOUR MEMBERS SHALL CONSTITUTE A QUORUM.

14 2. THE MEMBERS OF THE NEW YORK TITLE GUARANTY AUTHORITY BOARD SHALL
15 RECEIVE NO COMPENSATION FOR THEIR SERVICES BUT SHALL BE REIMBURSED FOR
16 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR
17 DUTIES.

18 3. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF ANY GENERAL, SPECIAL
19 OR LOCAL LAW, ORDINANCE, RESOLUTION OR CHARTER, NO OFFICER, MEMBER OR
20 EMPLOYEE OF THE STATE OF NEW YORK, ANY CITY, COUNTY, TOWN OR VILLAGE,
21 ANY GOVERNMENTAL ENTITY OPERATING ANY PUBLIC SCHOOL OR COLLEGE, ANY
22 SCHOOL DISTRICT OR ANY OTHER PUBLIC AGENCY OR INSTRUMENTALITY WHICH
23 EXERCISES GOVERNMENTAL POWERS UNDER THE LAWS OF THE STATE, SHALL FORFEIT
24 HIS OR HER OFFICE OR EMPLOYMENT BY REASON OF HIS OR HER ACCEPTANCE OF
25 APPOINTMENT AS A DIRECTOR, OFFICER OR EMPLOYEE OF THE AUTHORITY, NOR
26 SHALL SERVICE AS SUCH DIRECTOR, OFFICER OR EMPLOYEE OF THE AUTHORITY BE
27 DEEMED INCOMPATIBLE OR IN CONFLICT WITH SUCH OFFICE OR EMPLOYMENT.

28 4. FOUR DIRECTORS SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY
29 BUSINESS OR THE EXERCISE OF ANY POWER OF THE AUTHORITY. NO ACTION SHALL
30 BE TAKEN BY THE AUTHORITY EXCEPT PURSUANT TO A FAVORABLE VOTE OF AT
31 LEAST FOUR DIRECTORS PARTICIPATING IN A MEETING AT WHICH SUCH ACTION IS
32 TAKEN.

33 5. THE AUTHORITY SHALL APPOINT A TREASURER AND MAY APPOINT OFFICERS
34 AND AGENTS AS IT MAY REQUIRE AND PRESCRIBE THEIR DUTIES.

35 S 3977. GENERAL POWERS OF THE AUTHORITY. EXCEPT AS OTHERWISE LIMITED
36 BY THIS TITLE, THE AUTHORITY SHALL HAVE THE FOLLOWING POWERS IN ADDITION
37 TO THOSE SPECIALLY CONFERRED ELSEWHERE IN THIS TITLE, SUBJECT ONLY TO
38 AGREEMENTS WITH BONDHOLDERS:

39 1. TO SUE AND BE SUED;

40 2. TO HAVE A SEAL AND ALTER THE SAME AT PLEASURE;

41 3. TO MAKE AND ALTER BY-LAWS FOR ITS ORGANIZATION AND MANAGEMENT AND,
42 SUBJECT TO AGREEMENTS WITH ITS BONDHOLDERS, TO MAKE AND ALTER RULES AND
43 REGULATIONS GOVERNING THE EXERCISE OF ITS POWERS AND FULFILLMENT OF ITS
44 PURPOSES UNDER THIS TITLE;

45 4. TO MAKE AND EXECUTE CONTRACTS AND ALL OTHER INSTRUMENTS OR AGREE-
46 MENTS NECESSARY OR CONVENIENT TO CARRY OUT ANY POWERS AND FUNCTIONS
47 EXPRESSLY GIVEN IN THIS TITLE;

48 5. TO COMMENCE ANY ACTION TO PROTECT OR ENFORCE ANY RIGHT CONFERRED
49 UPON IT BY ANY LAW, CONTRACT OR OTHER AGREEMENT;

50 6. TO BORROW MONEY AND ISSUE BONDS, OR TO REFUND THE SAME, AND TO
51 PROVIDE FOR THE RIGHTS OF THE HOLDERS OF ITS BONDS;

52 7. AS SECURITY FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON ANY
53 BONDS ISSUED BY IT PURSUANT TO THIS TITLE AND ANY AGREEMENTS MADE IN
54 CONNECTION THEREWITH AND FOR ITS OBLIGATIONS UNDER BOND FACILITIES, TO
55 PLEDGE ALL OR ANY PART OF ITS REVENUES OR ASSETS;

1 8. TO ACCEPT GIFTS, GRANTS, LOANS OR CONTRIBUTIONS OF FUNDS OR FINAN-
2 CIAL OR OTHER AID IN ANY FORM FROM THE COUNTY, STATE OR FEDERAL GOVERN-
3 MENT OR ANY AGENCY OR INSTRUMENTALITY THEREOF, OR FROM ANY OTHER SOURCE
4 AND TO EXPEND THE PROCEEDS FOR ANY OF ITS CORPORATE PURPOSES IN ACCORD-
5 ANCE WITH THE PROVISIONS OF THIS TITLE;

6 9. SUBJECT TO THE PROVISIONS OF ANY CONTRACT WITH BONDHOLDERS, TO
7 INVEST ANY FUNDS HELD IN RESERVES OR SINKING FUNDS, OR ANY FUNDS NOT
8 REQUIRED FOR IMMEDIATE USE OR DISBURSEMENT, AT THE DISCRETION OF THE
9 AUTHORITY, IN (A) OBLIGATIONS OF THE STATE OR THE UNITED STATES GOVERN-
10 MENT, (B) OBLIGATIONS THE PRINCIPAL AND INTEREST OF WHICH ARE GUARANTEED
11 BY THE STATE OR THE UNITED STATES GOVERNMENT, (C) CERTIFICATES OF DEPOS-
12 IT, WHETHER NEGOTIABLE OR NON-NEGOTIABLE, AND BANKER'S ACCEPTANCES OF
13 ANY OF THE FIFTY LARGEST BANKS IN THE UNITED STATES WHICH BANK, AT THE
14 TIME OF INVESTMENT, HAS AN OUTSTANDING UNSECURED, UNINSURED AND UNGUAR-
15 ANTEED DEBT ISSUE RANKED IN EITHER OF THE TWO HIGHEST RATING CATEGORIES
16 OF TWO NATIONALLY RECOGNIZED INDEPENDENT RATING AGENCIES, (D) COMMERCIAL
17 PAPER OF ANY BANK OR CORPORATION CREATED UNDER THE LAWS OF EITHER THE
18 UNITED STATES OR ANY STATE OF THE UNITED STATES WHICH COMMERCIAL PAPER,
19 AT THE TIME OF THE INVESTMENT, HAS RECEIVED THE HIGHEST RATING OF TWO
20 NATIONALLY RECOGNIZED INDEPENDENT RATING AGENCIES, (E) BONDS, DEBEN-
21 TURES, OR OTHER EVIDENCES OF INDEBTEDNESS, ISSUED OR GUARANTEED AT THE
22 TIME OF THE INVESTMENT BY THE FEDERAL NATIONAL MORTGAGE ASSOCIATION,
23 FEDERAL HOME LOAN MORTGAGE CORPORATION, STUDENT LOAN MARKETING ASSOCI-
24 ATION, FEDERAL FARM CREDIT SYSTEM, OR ANY OTHER UNITED STATES GOVERNMENT
25 SPONSORED AGENCY, PROVIDED THAT AT THE TIME OF THE INVESTMENT SUCH AGEN-
26 CY RECEIVES, OR ITS OBLIGATIONS RECEIVE, ANY OF THE THREE HIGHEST RATING
27 CATEGORIES OF TWO NATIONALLY RECOGNIZED INDEPENDENT RATING AGENCIES, (F)
28 ANY BONDS OR OTHER OBLIGATIONS OF ANY STATE OR THE UNITED STATES OF
29 AMERICA OR OF ANY POLITICAL SUBDIVISION THEREOF OR ANY AGENCY, INSTRU-
30 MENTALITY OR LOCAL GOVERNMENTAL UNIT OF ANY SUCH STATE OR POLITICAL
31 SUBDIVISION WHICH BONDS OR OTHER OBLIGATIONS, AT THE TIME OF THE INVEST-
32 MENT, HAVE RECEIVED ANY OF THE THREE HIGHEST RATINGS OF TWO NATIONALLY
33 RECOGNIZED INDEPENDENT RATING AGENCIES, (G) ANY REPURCHASE AGREEMENT
34 WITH ANY BANK OR TRUST COMPANY ORGANIZED UNDER THE LAWS OF ANY STATE OF
35 THE UNITED STATES OF AMERICA OR ANY NATIONAL BANKING ASSOCIATION OR
36 GOVERNMENT BOND DEALER REPORTING TO, TRADING WITH, AND RECOGNIZED AS A
37 PRIMARY DEALER BY THE FEDERAL RESERVE BANK OF NEW YORK, WHICH AGREEMENT
38 IS SECURED BY ANY ONE OR MORE OF THE SECURITIES DESCRIBED IN PARAGRAPH
39 (A), (B) OR (E) OF THIS SUBDIVISION WHICH SECURITIES SHALL AT ALL TIMES
40 HAVE A MARKET VALUE OF NOT LESS THAN THE FULL AMOUNT OF THE REPURCHASE
41 AGREEMENT AND BE DELIVERED TO ANOTHER BANK OR TRUST COMPANY ORGANIZED
42 UNDER THE LAWS OF NEW YORK STATE OR ANY NATIONAL BANKING ASSOCIATION
43 DOMICILED IN NEW YORK STATE, AS CUSTODIAN, AND (H) REVERSE REPURCHASE
44 AGREEMENTS WITH ANY BANK OR TRUST COMPANY ORGANIZED UNDER THE LAWS OF
45 ANY STATE OF THE UNITED STATES OF AMERICA OR ANY NATIONAL BANKING ASSO-
46 CIATION OR GOVERNMENT BOND DEALER REPORTING TO, TRADING WITH, AND RECOG-
47 NIZED AS A PRIMARY DEALER BY THE FEDERAL RESERVE BANK OF NEW YORK, WHICH
48 AGREEMENT IS SECURED BY ANY ONE OR MORE OF THE SECURITIES DESCRIBED IN
49 PARAGRAPH (A), (B) OR (E) OF THIS SUBDIVISION WHICH SECURITIES SHALL AT
50 ALL TIMES HAVE A MARKET VALUE OF NOT LESS THAN THE FULL AMOUNT OF THE
51 REPURCHASE AGREEMENT AND BE DELIVERED TO ANOTHER BANK OR TRUST COMPANY
52 ORGANIZED UNDER THE LAWS OF NEW YORK STATE OR ANY NATIONAL BANKING ASSO-
53 CIATION DOMICILED IN NEW YORK STATE, AS CUSTODIAN;

54 10. TO APPOINT SUCH OFFICERS AND EMPLOYEES AS IT MAY REQUIRE FOR THE
55 PERFORMANCE OF ITS DUTIES AND TO FIX AND DETERMINE THEIR QUALIFICATIONS,
56 DUTIES, AND COMPENSATION, AND TO RETAIN OR EMPLOY COUNSEL, AUDITORS AND

PRIVATE FINANCIAL CONSULTANTS AND OTHER SERVICES ON A CONTRACT BASIS OR OTHERWISE FOR RENDERING PROFESSIONAL, BUSINESS OR TECHNICAL SERVICES AND ADVICE; AND, IN TAKING SUCH ACTIONS, THE AUTHORITY SHALL CONSIDER THE FINANCIAL IMPACT ON THE COUNTY; AND

11. TO DO ANY AND ALL THINGS NECESSARY OR CONVENIENT TO CARRY OUT ITS PURPOSES AND EXERCISE THE POWERS EXPRESSLY GIVEN AND GRANTED IN THIS TITLE; PROVIDED, HOWEVER, SUCH AUTHORITY SHALL UNDER NO CIRCUMSTANCES ACQUIRE, HOLD OR TRANSFER TITLE TO, LEASE, OWN BENEFICIALLY OR OTHERWISE, MANAGE, OPERATE OR OTHERWISE EXERCISE CONTROL OVER ANY REAL PROPERTY, ANY IMPROVEMENT TO REAL PROPERTY OR ANY INTEREST THEREIN OTHER THAN A LEASE OR SUBLEASE OF OFFICE SPACE DEEMED NECESSARY OR DESIRABLE BY THE AUTHORITY.

S 3978. SPECIAL POWERS OF THE AUTHORITY. THE NEW YORK STATE TITLE GUARANTY AUTHORITY BOARD SHALL OFFER GUARANTIES OF REAL PROPERTY TITLES IN THIS STATE. THE TERMS, CONDITIONS AND FORM OF THE GUARANTY CONTRACTS SHALL BE FORMS APPROVED BY THE AUTHORITY. THE AUTHORITY SHALL FIX A CHARGE FOR THE GUARANTY IN AN AMOUNT SUFFICIENT TO PERMIT THE PROGRAM TO OPERATE ON A SELF-SUSTAINING BASIS, INCLUDING PAYMENT OF ADMINISTRATIVE COSTS AND THE MAINTENANCE OF AN ADEQUATE RESERVE AGAINST CLAIMS UNDER THE TITLE GUARANTY PROGRAM.

S 3979. NEW YORK TITLE GUARANTY FUND. 1. A TITLE GUARANTY FUND IS CREATED. FUNDS COLLECTED UNDER THIS PROGRAM SHALL BE PLACED IN THE TITLE GUARANTY FUND AND ARE AVAILABLE TO PAY ALL CLAIMS, NECESSARY RESERVES AND ALL ADMINISTRATIVE COSTS OF THE TITLE GUARANTY PROGRAM. MONEYS IN THE FUND SHALL NOT REVERT TO THE GENERAL FUND AND INTEREST ON THE MONEYS IN THE FUND SHALL REQUIRE COSTS OF TITLE INSURANCE TO BE SUFFICIENT ENOUGH TO INCLUDE FIFTY MILLION DOLLARS ANNUALLY FOR AFFORDABLE HOUSING, FIFTY MILLION DOLLARS ANNUALLY TO ENSURE THAT THE STATE'S ROADS AND BRIDGES ARE IN A STATE OF GOOD REPAIR, FIFTY MILLION DOLLARS ANNUALLY FOR THE PURPOSE OF A STAR REBATE PROGRAM AND OTHER SUCH PURPOSES AS MAY BE REQUIRED BY THE LEGISLATURE AND THE GOVERNOR.

2. A TITLE GUARANTY, CLOSING PROTECTION LETTER, OR GAP COVERAGE ISSUED UNDER THIS PROGRAM IS AN OBLIGATION OF THE AUTHORITY ONLY AND CLAIMS ARE PAYABLE SOLELY AND ONLY OUT OF THE MONEYS, ASSETS, AND REVENUES OF THE TITLE GUARANTY FUND AND ARE NOT AN INDEBTEDNESS OR LIABILITY OF THE STATE. THE STATE IS NOT LIABLE ON ANY GUARANTY, CLOSING PROTECTION LETTER, OR GAP COVERAGE.

3. THE AUTHORITY SHALL CONSULT WITH THE INSURANCE DEPARTMENT IN DEVELOPING A GUARANTY CONTRACT ACCEPTABLE TO THE SECONDARY MARKET AND DEVELOPING ANY OTHER FEATURE OF THE PROGRAM WITH WHICH THE INSURANCE DIVISION MAY HAVE SPECIAL EXPERTISE. THE INSURANCE DEPARTMENT SHALL ESTABLISH THE AMOUNT FOR A LOSS RESERVE FUND. EXCEPT AS PROVIDED IN THIS SECTION, THE TITLE GUARANTY PROGRAM IS NOT SUBJECT TO THE JURISDICTION OF OR REGULATION BY THE INSURANCE DEPARTMENT.

S 3980. PARTICIPATING ATTORNEYS. 1. EACH PARTICIPATING ATTORNEY AND ABTRACTOR MAY BE REQUIRED TO PAY AN ANNUAL PARTICIPATION FEE TO BE ELIGIBLE TO PARTICIPATE IN THE TITLE GUARANTY PROGRAM. THE FEE, IF ANY, SHALL BE SET BY THE AUTHORITY, SUBJECT TO THE APPROVAL OF THE BOARD.

2. THE PARTICIPATION OF ABTRACTORS AND ATTORNEYS SHALL BE IN ACCORDANCE WITH RULES ESTABLISHED BY THE BOARD.

A. (1) EACH PARTICIPANT SHALL AT ALL TIMES MAINTAIN LIABILITY COVERAGE IN AMOUNTS APPROVED BY THE AUTHORITY. UPON PAYMENT OF A CLAIM BY THE AUTHORITY THE AUTHORITY SHALL BE SUBROGATED TO THE RIGHTS OF THE CLAIMANT AGAINST ALL PERSONS RELATING TO THE CLAIM.

(2) ADDITIONALLY, EACH PARTICIPATING ABTRACTOR IS REQUIRED TO OWN OR LEASE, AND MAINTAIN AND USE IN THE PREPARATION OF ABTRACTS, AN

1 UP-TO-DATE ABSTRACT TITLE PLANT INCLUDING TRACT INDICES FOR REAL ESTATE
2 FOR EACH COUNTY IN WHICH ABSTRACTS ARE PREPARED FOR REAL PROPERTY TITLES
3 GUARANTEED BY THE DIVISION. THE TRACT INDICES SHALL CONTAIN A REFERENCE
4 TO ALL INSTRUMENTS AFFECTING THE REAL ESTATE WHICH ARE RECORDED IN THE
5 OFFICE OF THE COUNTY RECORDER, AND SHALL COMMENCE NOT LESS THAN FORTY
6 YEARS PRIOR TO THE DATE THE ABTRACTOR COMMENCES PARTICIPATION IN THE
7 TITLE GUARANTY PROGRAM. HOWEVER, A PARTICIPATING ATTORNEY PROVIDING
8 ABSTRACT SERVICES CONTINUOUSLY FROM NOVEMBER TWELFTH, NINETEEN HUNDRED
9 EIGHTY-SIX, TO THE DATE OF APPLICATION, EITHER PERSONALLY OR THROUGH
10 PERSONS UNDER THE ATTORNEY'S SUPERVISION AND CONTROL IS EXEMPT FROM THE
11 REQUIREMENTS OF THIS SUBPARAGRAPH.

12 B. THE AUTHORITY MAY WAIVE THE REQUIREMENTS OF THIS SECTION PURSUANT
13 TO AN APPLICATION OF AN ATTORNEY OR ABTRACTOR WHICH SHOWS THAT THE
14 REQUIREMENTS IMPOSE A HARDSHIP TO THE ATTORNEY OR ABTRACTOR AND THAT
15 THE WAIVER CLEARLY IS IN THE PUBLIC INTEREST OR IS ABSOLUTELY NECESSARY
16 TO ENSURE AVAILABILITY OF TITLE GUARANTIES THROUGHOUT THE STATE.

17 3. PRIOR TO THE ISSUANCE OF A TITLE GUARANTY, THE AUTHORITY SHALL
18 REQUIRE EVIDENCE THAT AN ABSTRACT OF TITLE TO THE PROPERTY IN QUESTION
19 HAS BEEN BROUGHT UP-TO-DATE AND CERTIFIED BY A PARTICIPATING ABTRACTOR
20 IN A FORM APPROVED BY AUTHORITY RULES AND A TITLE OPINION ISSUED BY A
21 PARTICIPATING ATTORNEY IN THE FORM APPROVED IN THE RULES STATING THE
22 ATTORNEY'S OPINION AS TO THE TITLE. THE AUTHORITY SHALL REQUIRE EVIDENCE
23 OF THE ABSTRACT BEING BROUGHT UP-TO-DATE AND THE ABTRACTOR SHALL RETAIN
24 EVIDENCE OF THE ABSTRACT AS DETERMINED BY THE BOARD.

25 4. THE ATTORNEY RENDERING A TITLE OPINION SHALL BE AUTHORIZED TO ISSUE
26 A TITLE GUARANTY CERTIFICATE SUBJECT TO THE RULES OF THE AUTHORITY.

27 S 2. This act shall take effect immediately.