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

5651

2015-2016 Regular Sessions

I N A S S E M B L Y

March 3, 2015

Introduced by M. of A. RUSSELL -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to bonds of the Ogdensburg Bridge Authority; and to repeal section 706 of the public authorities law relating thereto

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

Section 1. The public authorities law is amended by adding a new section 736 to read as follows:

S 736. BONDS OF THE AUTHORITY. 1. THE AUTHORITY SHALL HAVE THE POWER AND IS HEREBY AUTHORIZED FROM TIME TO TIME TO ISSUE BONDS, NOTES OR OTHER OBLIGATIONS TO PAY THE COST OF ANY PROJECT OR FOR ANY OTHER CORPORATE PURPOSE, INCLUDING THE ESTABLISHMENT OF RESERVES TO SECURE BONDS, THE PAYMENT OF PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS AND THE PAYMENT OF INCIDENTAL EXPENSES IN CONNECTION THEREWITH. THE AGGREGATE PRINCIPAL AMOUNT OF SUCH BONDS, NOTES OR OTHER OBLIGATIONS SHALL NOT EXCEED ONE HUNDRED MILLION DOLLARS, EXCLUDING BONDS, NOTES OR OTHER OBLIGATIONS ISSUED TO REFUND OR OTHERWISE REPAY BONDS, NOTES OR OTHER OBLIGATIONS THEREFORE ISSUED FOR SUCH PURPOSES; PROVIDED, HOWEVER, THAT UPON ANY SUCH REFUNDING OR REPAYMENT OF THE TOTAL AGGREGATE PRINCIPAL AMOUNT OF OUTSTANDING BONDS, NOTES OR OTHER OBLIGATIONS MAY BE GREATER THAN ONE HUNDRED MILLION DOLLARS ONLY IF THE PRESENT VALUE OF THE AGGREGATE DEBT SERVICE OF THE FUNDING OR REPAYMENT BONDS, NOTES OR OTHER OBLIGATIONS TO BE ISSUED SHALL NOT EXCEED THE PRESENT VALUE OF THE AGGREGATE DEBT SERVICE OF THE BONDS, NOTES OR OTHER OBLIGATIONS TO BE REFUNDED OR REPAID. FOR PURPOSES OF THIS SECTION, THE PRESENT VALUES OF THE AGGREGATE DEBT SERVICE OF THE REFUNDING OR REPAYMENT BONDS, NOTES OR OTHER OBLIGATIONS AND OF THE AGGREGATE DEBT SERVICE OF THE BONDS, NOTES OR OTHER OBLIGATIONS SO REFUNDED OR REPAID, SHALL BE CALCULATED BY UTILIZING THE EFFECTIVE INTEREST RATE OF THE REFUNDING OR REPAYMENT BONDS, NOTES OR OTHER OBLIGATIONS, WHICH SHALL BE THAT RATE ARRIVED AT

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

LBD09649-01-5

BY DOUBLING THE SEMI-ANNUAL INTEREST RATE (COMPOUNDED SEMI-ANNUALLY) NECESSARY TO DISCOUNT THE DEBT SERVICE PAYMENTS ON THE REFUNDING OR REPAYMENT BONDS, NOTES OR OTHER OBLIGATIONS FROM THE PAYMENT DATES THEREOF TO THE DATE OF ISSUE OF THE REFUNDING OR REPAYMENT BONDS, NOTES OR OTHER OBLIGATIONS AND TO THE PRICE BID INCLUDING ESTIMATED ACCRUED INTEREST OR PROCEEDS RECEIVED BY THE AUTHORITY INCLUDING ESTIMATED ACCRUED INTEREST FROM THE SALE THEREOF. THE AUTHORITY SHALL HAVE POWER AND IS HEREBY AUTHORIZED TO ENTER INTO SUCH AGREEMENT AND PERFORM SUCH ACTS AS MAY BE REQUIRED UNDER ANY APPLICABLE FEDERAL LEGISLATION TO SECURE A FEDERAL GUARANTEE OF ANY BONDS.

2. THE AUTHORITY SHALL HAVE POWER FROM TIME TO TIME TO RENEW BONDS OR TO ISSUE RENEWAL BONDS FOR SUCH PURPOSE, TO ISSUE BONDS TO PAY BONDS, AND, WHENEVER IT DEEMS REFUNDING EXPEDIENT, TO REFUND ANY BOND BY THE ISSUANCE OF NEW BONDS, WHETHER THE BONDS TO BE REFUNDED HAVE OR HAVE NOT MATURED, AND MAY ISSUE BONDS PARTLY TO REFUND BONDS THEN OUTSTANDING AND PARTLY FOR ANY OTHER CORPORATE PURPOSE OF THE AUTHORITY. BONDS ISSUED FOR REFUNDING PURPOSES SHALL BE SOLD AND THE PROCEEDS APPLIED TO THE PURCHASE, REDEMPTION OR PAYMENT OF THE BONDS OR NOTES TO BE REFUNDED.

3. BONDS ISSUED BY THE AUTHORITY MAY BE GENERAL OBLIGATIONS SECURED BY THE FAITH AND CREDIT OF THE AUTHORITY OR MAY BE SPECIAL OBLIGATIONS PAYABLE SOLELY OUT OF PARTICULAR REVENUES OR OTHER MONEYS AS MAY BE DESIGNATED IN THE PROCEEDINGS OF THE AUTHORITY UNDER WHICH THE BONDS SHALL BE AUTHORIZED TO BE ISSUED, SUBJECT AS TO PRIORITY ONLY TO ANY AGREEMENTS WITH THE HOLDERS OF OUTSTANDING BONDS PLEDGING ANY PARTICULAR PROPERTY, REVENUES OR MONEYS. THE AUTHORITY MAY ALSO ENTER INTO LOAN AGREEMENTS, LINES OF CREDIT AND OTHER SECURITY AGREEMENTS AND OBTAIN FOR OR ON ITS BEHALF LETTERS OF CREDIT, INSURANCE, GUARANTEES OR OTHER CREDIT ENHANCEMENTS TO THE EXTENT NOW OR HEREAFTER AVAILABLE, IN EACH CASE FOR SECURING ITS BONDS OR TO PROVIDE DIRECT PAYMENT OF ANY COSTS WHICH THE AUTHORITY IS AUTHORIZED TO PAY.

4. (A) BONDS SHALL BE AUTHORIZED BY RESOLUTION OF THE AUTHORITY, BE IN SUCH DENOMINATIONS AND BEAR SUCH DATE OR DATES AND MATURE AT SUCH TIME OR TIMES, AS SUCH RESOLUTION MAY PROVIDE, PROVIDED THAT BONDS AND RENEWALS THEREOF SHALL MATURE WITHIN THIRTY YEARS FROM THE DATE OF ORIGINAL ISSUANCE OF ANY SUCH BONDS.

(B) BONDS SHALL BE SUBJECT TO SUCH TERMS OF REDEMPTION, BEAR INTEREST AT SUCH RATE OR RATES, BE PAYABLE AT SUCH TIMES, BE IN SUCH FORM, EITHER COUPON OR REGISTERED, CARRY SUCH REGISTRATION PRIVILEGES, BE EXECUTED IN SUCH MANNER, BE PAYABLE IN SUCH MEDIUM OF PAYMENT AT SUCH PLACE OR PLACES, AND BE SUBJECT TO SUCH TERMS AND CONDITIONS AS SUCH RESOLUTION MAY PROVIDE.

(C) NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, THE BONDS OF THE AUTHORITY ISSUED PURSUANT TO THIS SECTION SHALL BE SOLD TO THE BIDDER OFFERING THE LOWEST TRUE INTEREST COST, TAKING INTO CONSIDERATION ANY PREMIUM OR DISCOUNT NOT LESS THAN FOUR NOR MORE THAN FIFTEEN DAYS, SUNDAYS EXCEPTED, AFTER A NOTICE OF SUCH SALE HAS BEEN PUBLISHED AT LEAST ONCE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AREA SERVED BY THE AUTHORITY AND ON THE AUTHORITY WEBSITE, WHICH SHALL STATE THE TERMS OF THE SALE. THE TERMS OF THE SALE MAY NOT CHANGE UNLESS NOTICE OF SUCH CHANGE IS PUBLISHED IN SUCH NEWSPAPER AND ON THE AUTHORITY WEBSITE AT LEAST ONE DAY PRIOR TO THE DATE OF THE SALE AS SET FORTH IN THE ORIGINAL NOTICE OF SALE. ADVERTISEMENTS SHALL CONTAIN A PROVISION TO THE EFFECT THAT THE AUTHORITY, IN ITS DISCRETION, MAY REJECT ANY OR ALL BIDS MADE IN PURSUANCE OF SUCH ADVERTISEMENTS, AND IN THE EVENT OF SUCH REJECTION, THE AUTHORITY IS AUTHORIZED TO NEGOTIATE A PRIVATE OR PUBLIC SALE OR RE-ADVERTISE FOR BIDS IN THE FORM AND MANNER ABOVE DESCRIBED AS MANY

TIMES AS, IN ITS JUDGMENT, MAY BE NECESSARY TO EFFECT A SATISFACTORY SALE.

(D) NOTWITHSTANDING THE PROVISIONS OF THE PRECEDING PARAGRAPH, WHENEVER IN THE JUDGMENT OF THE AUTHORITY THE INTERESTS OF THE AUTHORITY WILL BE SERVED THEREBY, THE MEMBERS OF THE AUTHORITY, ON THE WRITTEN RECOMMENDATION OF THE CHAIRPERSON, MAY AUTHORIZE THE SALE OF SUCH BONDS AT PRIVATE OR PUBLIC SALE ON A NEGOTIATED BASIS OR ON EITHER A COMPETITIVE OR NEGOTIATED BASIS. THE AUTHORITY SHALL SET GUIDELINES GOVERNING THE TERMS AND CONDITIONS OF ANY SUCH PRIVATE OR PUBLIC SALES.

(E) THE PRIVATE OR PUBLIC BOND SALE GUIDELINES SET BY THE AUTHORITY SHALL INCLUDE, BUT NOT BE LIMITED TO A REQUIREMENT THAT WHERE THE INTERESTS OF THE AUTHORITY WILL BE SERVED BY A PRIVATE OR PUBLIC SALE OF BONDS, THE AUTHORITY SHALL SELECT UNDERWRITERS FOR PRIVATE OR PUBLIC BOND SALES CONDUCTED PURSUANT TO A REQUEST FOR PROPOSAL PROCESS UNDERTAKEN AT LEAST ONCE ANNUALLY AND CONSIDERATION OF PROPOSALS FROM QUALIFIED UNDERWRITERS TAKING INTO ACCOUNT, AMONG OTHER THINGS, QUALIFICATIONS OF UNDERWRITERS AS TO EXPERIENCE, THEIR ABILITY TO STRUCTURE AND SELL AUTHORITY BOND ISSUES, ANTICIPATED COSTS TO THE AUTHORITY, THE PRIOR EXPERIENCE OF THE AUTHORITY WITH THE FIRM, IF ANY, THE CAPITALIZATION OF SUCH FIRMS, PARTICIPATION OF QUALIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE FIRMS IN SUCH PRIVATE OR PUBLIC SALES OF BONDS OF THE AUTHORITY AND THE EXPERIENCE AND ABILITY OF FIRMS UNDER CONSIDERATION TO WORK WITH MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES SO AS TO PROMOTE AND ASSIST PARTICIPATION BY SUCH ENTERPRISES.

(F) THE AUTHORITY SHALL HAVE THE POWER FROM TIME TO TIME TO AMEND SUCH PRIVATE BOND SALE GUIDELINES IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION.

(G) NO PRIVATE OR PUBLIC BOND SALE ON A NEGOTIATED BASIS SHALL BE CONDUCTED BY THE AUTHORITY WITHOUT PRIOR APPROVAL OF THE STATE COMPTROLLER.

(H) THE AUTHORITY SHALL ANNUALLY PREPARE AND APPROVE A BOND SALE REPORT WHICH SHALL INCLUDE THE PRIVATE OR PUBLIC BOND SALE GUIDELINES AS SPECIFIED IN THIS SUBDIVISION, AMENDMENTS TO SUCH GUIDELINES SINCE THE LAST PRIVATE OR PUBLIC BOND SALE REPORT, AN EXPLANATION OF THE BOND SALE GUIDELINES AND AMENDMENTS, AND THE RESULTS OF ANY SALE OF BONDS CONDUCTED DURING THE FISCAL YEAR. SUCH BOND SALE REPORT MAY BE A PART OF ANY OTHER ANNUAL REPORT THAT THE AUTHORITY IS REQUIRED TO MAKE.

(I) THE AUTHORITY SHALL ANNUALLY SUBMIT ITS BOND SALE REPORT TO THE STATE COMPTROLLER AND COPIES THEREOF TO THE SENATE FINANCE COMMITTEE, THE ASSEMBLY WAYS AND MEANS COMMITTEE AND THE AUTHORITY BUDGET OFFICE.

(J) THE AUTHORITY SHALL MAKE AVAILABLE TO THE PUBLIC COPIES OF ITS BOND SALE REPORT UPON REASONABLE REQUEST THEREFORE.

(K) NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE DEEMED TO ALTER, AFFECT THE VALIDITY OF, MODIFY THE TERMS OF OR IMPAIR ANY CONTRACT OR AGREEMENT MADE OR ENTERED INTO IN VIOLATION OF, OR WITHOUT COMPLIANCE WITH, THE PROVISIONS OF THIS SUBDIVISION.

5. ANY RESOLUTION OR RESOLUTIONS AUTHORIZING BONDS OR ANY ISSUE OF BONDS MAY CONTAIN PROVISIONS WHICH MAY BE A PART OF THE CONTRACT WITH THE HOLDERS OF THE BONDS THEREBY AUTHORIZED AS TO:

(A) PLEDGING ALL OR ANY PART OF THE REVENUES, OTHER MONEYS OR PROPERTY OF THE AUTHORITY TO SECURE THE PAYMENT OF THE BONDS, OR ANY COSTS OF ISSUANCE THEREOF, INCLUDING BUT NOT LIMITED TO ANY CONTRACTS, EARNINGS OR PROCEEDS OF ANY GRANTS TO THE AUTHORITY RECEIVED FROM ANY PRIVATE OR PUBLIC SOURCE SUBJECT TO SUCH AGREEMENTS WITH BONDHOLDERS AS MAY THEN EXIST;

(B) THE SETTING ASIDE OF RESERVES AND THE CREATION OF SINKING FUNDS AND THE REGULATION AND DISPOSITION THEREOF;

(C) LIMITATIONS ON THE PURPOSE TO WHICH THE PROCEEDS FROM THE SALE OF BONDS MAY BE APPLIED;

(D) THE RATES, RENTS, FEES AND OTHER CHARGES TO BE FIXED AND COLLECTED BY THE AUTHORITY AND THE AMOUNT TO BE RAISED IN EACH YEAR THEREBY AND THE USE AND DISPOSITION OF REVENUES;

(E) LIMITATIONS ON THE RIGHT OF THE AUTHORITY TO RESTRICT AND REGULATE THE USE OF THE PROJECT OR PART THEREOF IN CONNECTION WITH WHICH BONDS ARE ISSUED;

(F) LIMITATIONS ON THE ISSUANCE OF ADDITIONAL BONDS, THE TERMS UPON WHICH ADDITIONAL BONDS MAY BE ISSUED AND SECURED AND THE REFUNDING OF OUTSTANDING OR OTHER BONDS;

(G) THE PROCEDURE, IF ANY, BY WHICH THE TERMS OF ANY CONTRACT WITH BONDHOLDERS MAY BE AMENDED OR ABROGATED, THE AMOUNT OF BONDS THE HOLDERS OF WHICH MUST CONSENT THERETO, AND THE MANNER IN WHICH SUCH CONSENT MAY BE GIVEN;

(H) THE CREATION OF SPECIAL FUNDS INTO WHICH ANY REVENUES OR MONEYS MAY BE DEPOSITED;

(I) THE TERMS AND PROVISIONS OF ANY TRUST, MORTGAGE, DEED OR INDENTURE SECURING THE BONDS UNDER WHICH THE BONDS MAY BE ISSUED;

(J) VESTING IN A TRUSTEE OR TRUSTEES SUCH PROPERTIES, RIGHTS, POWERS AND DUTIES IN TRUST AS THE AUTHORITY MAY DETERMINE WHICH MAY INCLUDE ANY OR ALL OF THE RIGHTS, POWERS OR DUTIES OF THE TRUSTEES APPOINTED BY THE BONDHOLDERS PURSUANT TO THIS TITLE AND LIMITING OR ABROGATING THE RIGHTS OF THE BONDHOLDERS TO APPOINT A TRUSTEE UNDER SUCH SECTION OR LIMITING THE RIGHTS, DUTIES AND POWERS OF SUCH TRUSTEE;

(K) DEFINING THE ACTS OR OMISSIONS TO ACT WHICH MAY CONSTITUTE A DEFAULT IN THE OBLIGATIONS AND DUTIES OF THE AUTHORITY TO THE BONDHOLDERS AND PROVIDING FOR THE RIGHTS AND REMEDIES OF THE BONDHOLDERS IN THE EVENT OF SUCH DEFAULT, INCLUDING AS A MATTER OF RIGHT THE APPOINTMENT OF A RECEIVER, PROVIDED, HOWEVER, THAT SUCH RIGHTS AND REMEDIES SHALL NOT BE INCONSISTENT WITH THE GENERAL LAWS OF THE STATE AND OTHER PROVISIONS OF THIS TITLE;

(L) LIMITATIONS ON THE POWER OF THE AUTHORITY TO SELL OR OTHERWISE DISPOSE OF ANY PROJECT OF ANY PART THEREOF;

(M) LIMITATIONS ON THE AMOUNT OF REVENUES AND OTHER MONEYS TO BE EXPENDED FOR OPERATING, ADMINISTRATIVE OR OTHER EXPENSES OF THE AUTHORITY;

(N) THE PAYMENT OF THE PROCEED OF BONDS, REVENUES AND OTHER MONEYS TO A TRUSTEE OR OTHER DEPOSITORY, AND FOR THE METHOD OF DISBURSEMENT THEREOF WITH SUCH SAFEGUARDS AND RESTRICTIONS AS THE AUTHORITY MAY DETERMINE; AND

(O) ANY OTHER MATTES OF LIKE OR DIFFERENT CHARACTER WHICH IN ANY WAY AFFECT THE SECURITY OR PROTECTION OF THE BONDS OR THE RIGHTS AND REMEDIES OF BONDHOLDERS.

6. IN ADDITION TO THE POWERS HEREIN CONFERRED UPON THE AUTHORITY TO SECURE ITS BONDS, THE AUTHORITY SHALL HAVE POWER IN CONNECTION WITH THE ISSUANCE OF BONDS TO ADOPT RESOLUTIONS AND ENTER INTO SUCH TRUST INDENTURES, AGREEMENTS OR OTHER INSTRUMENTS AS THE AUTHORITY MAY DEEM NECESSARY, CONVENIENT OR DESIRABLE CONCERNING THE USE OR DISPOSITION OF ITS REVENUES OR OTHER MONEYS OR PROPERTY, INCLUDING THE MORTGAGING OF ANY PROPERTY AND THE ENTRUSTING, PLEDGING OR CREATION OF ANY OTHER SECURITY INTEREST IN ANY SUCH REVENUES, MONEYS OR PROPERTY AND THE DOING OF ANY ACT, INCLUDING REFRAINING FROM DOING ANY ACT WHICH THE AUTHORITY WOULD HAVE THE RIGHT TO DO IN THE ABSENCE OF SUCH RESOLUTIONS, TRUST INDEN-

TURES, AGREEMENTS OR OTHER INSTRUMENTS. THE AUTHORITY SHALL HAVE THE POWER TO ENTER INTO AMENDMENTS OF ANY SUCH RESOLUTIONS, TRUST INDENTURES, AGREEMENTS OR OTHER INSTRUMENTS. THE PROVISIONS OF ANY SUCH RESOLUTIONS, TRUST INDENTURES, AGREEMENTS OR OTHER INSTRUMENTS MAY BE MADE A PART OF THE CONTRACT WITH THE HOLDERS OF BONDS OF THE AUTHORITY.

7. ANY PROVISION OF THE UNIFORM COMMERCIAL CODE TO THE CONTRARY NOTWITHSTANDING, ANY PLEDGE OF OR OTHER SECURITY INTEREST IN REVENUES, MONEYS, ACCOUNTS, CONTRACT RIGHTS, GENERAL INTANGIBLES OR OTHER PERSONAL PROPERTY MADE OR CREATED BY THE AUTHORITY SHALL BE VALID, BINDING AND PERFECTED FROM THE TIME WHEN SUCH PLEDGE IS MADE OR OTHER SECURITY INTEREST ATTACHES WITHOUT ANY PHYSICAL DELIVERY OF THE COLLATERAL OR FURTHER ACT, AND THE LIEN OF ANY SUCH PLEDGE OR OTHER SECURITY INTEREST SHALL BE VALID, BINDING AND PERFECTED AGAINST ALL PARTIES HAVING CLAIMS OF ANY KIND IN TORT, CONTRACT OR OTHERWISE AGAINST THE AUTHORITY IRRESPECTIVE OF WHETHER OR NOT SUCH PARTIES HAVE NOTICE THEREOF. NO INSTRUMENT BY WHICH SUCH A PLEDGE OR SECURITY INTEREST IS CREATED NOR ANY FINANCING STATEMENT NEED BE RECORDED OR FILED.

8. WHETHER OR NOT THE BONDS ARE OF SUCH FORM AND CHARACTER AS TO BE NEGOTIABLE INSTRUMENTS UNDER THE TERMS OF THE UNIFORM COMMERCIAL CODE, THE BONDS ARE HEREBY MADE NEGOTIABLE INSTRUMENTS WITHIN THE MEANING OF AND FOR ALL THE PURPOSES OF THE UNIFORM COMMERCIAL CODE, SUBJECT ONLY TO THE PROVISIONS OF THE BONDS FOR REGISTRATION.

9. NEITHER THE MEMBERS OF THE AUTHORITY NOR ANY PERSON EXECUTING ITS BONDS SHALL BE LIABLE PERSONALLY ON ITS BONDS OR BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE THEREOF.

10. SUBJECT TO SUCH AGREEMENTS WITH BONDHOLDERS AS MAY THEN EXIST, THE AUTHORITY SHALL HAVE POWER OUT OF ANY FUNDS AVAILABLE THEREFOR TO PURCHASE BONDS OF THE AUTHORITY, WHICH SHALL THEREUPON BE CANCELLED, AT A PRICE NOT EXCEEDING: (A) IF THE BONDS ARE THEN REDEEMABLE, THE REDEMPTION PRICE THEN APPLICABLE PLUS ACCRUED INTEREST TO THE NEXT INTEREST PAYMENT DATE; OR (B) IF THE BONDS ARE NOT THEN REDEEMABLE, THEN THE REDEMPTION PRICE APPLICABLE ON THE FIRST DATE AFTER SUCH PURCHASE UPON WHICH THE BONDS BECOME SUBJECT TO REDEMPTION PLUS ACCRUED INTEREST TO THE NEXT INTEREST PAYMENT DATE. BONDS SO PURCHASED SHALL THEREUPON BE CANCELLED.

S 2. Section 706 of the public authorities law is REPEALED.

S 3. This act shall take effect immediately.