STATE OF NEW YORK

4805

2017-2018 Regular Sessions

IN ASSEMBLY

February 3, 2017

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

AN ACT to amend the public authorities law and the tax law, in relation to enacting the metropolitan transportation infrastructure financing authority act of 2017

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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

TITLE 4
METROPOLITAN TRANSPORTATION
INFRASTRUCTURE FINANCING AUTHORITY

Section 3975. Short title.
3976. Definitions.
3977. Metropolitan transportation infrastructure financing authority.
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3985. Exemption from taxation.
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3987. Remedies of bondholders.
3988. Assistance by state officers, departments, boards and commissions.
3989. Applicability.

§ 3975. Short title. This title shall be known and may be cited as the "metropolitan transportation infrastructure financing authority act of 2017".

§ 3976. Definitions. For the purposes of this title, unless the context otherwise requires:

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

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1. "Authority" or "metropolitan transportation infrastructure financing authority" means the public benefit corporation created by this title.

2. "Bonds" means bonds, notes and other evidences of indebtedness, issued by the authority.

3. "Comptroller" means the comptroller of the state of New York.

4. "MTA" means the metropolitan transportation authority established pursuant to title eleven of article five of this chapter.

5. "Project capital costs" or "costs" means costs providing for the construction, reconstruction, acquisition or installation of physical public betterments or improvements; or the costs of any preliminary studies, appraisals, surveys, maps, plans, estimates and hearings; or costs for the preparation of designs, specifications, testing and environmental impact statements; or costs of engineering; or incidental costs, including, but not limited to, legal fees, printing or engraving, publication of notices, taking of title, apportionment of costs, and interest during construction; or any underwriting or other costs incurred in connection with the financing thereof.

6. "Revenues" means the tax revenues and all aid, rents, fees, charges, payments and the income and receipts paid or payable to the authority.

7. "State" means the state of New York.

8. "Tax revenues" means the taxes paid or payable to the authority pursuant to section thirty-nine hundred eighty-one of this title and such other revenues as the authority may derive directly from taxes imposed and collected by the state.

§ 3977. Metropolitan transportation infrastructure financing authority. 1. There is hereby created the metropolitan transportation infrastructure financing authority. The authority shall be a corporate governmental agency constituting a public benefit corporation and an instrumentality of the state.

2. In accordance with the provisions of this title, the authority may only finance costs, including the refunding of bonds issued by the authority to finance costs, and fund reserves to secure such bonds.

3. The authority shall continue until all its liabilities have been met or otherwise discharged. Upon the termination of the existence of the authority, all of its rights and property shall pass to and be vested in the state.

§ 3978. Administration of the authority. 1. The authority shall be administered by seven directors: five voting members consisting of the director of the budget, two members appointed by the governor, and one each by the speaker of the assembly and the temporary president of the senate; and two non-voting members, one each appointed by the minority leaders of the assembly and the senate.

2. The members of the board shall appoint one of the directors to serve as chairperson of the authority. The chairperson shall preside over all meetings of the directors and shall have such other duties as may be fixed by the directors.

3. Notwithstanding any inconsistent provision of any general, special or local law, ordinance, resolution or charter, no officer, member or employee of the state, any city, county, town or village, any governmental entity operating any public school or college, any school district or any other public agency or instrumentality which exercises governmental powers under the laws of the state, shall forfeit his or her office or employment by reason of his or her acceptance of appoint-

ment as a director of the authority, nor shall service as such director be deemed incompatible or in conflict with such office or employment.

4. Notwithstanding any inconsistent provision of this chapter, five directors shall constitute a quorum for the transaction of any business or the exercise of any power of the authority. No action shall be taken by the authority except pursuant to a favorable vote of at least five directors present at a meeting at which such action is taken. Any director may, by written instrument, filed with and approved as to form by the authority, designate an alternate to perform, in the absence of such director, his or her duties under this title. The term "director" as used in this title shall include such alternates, except that no alternate may designate an alternate pursuant to this subdivision. The designation of such alternates shall be deemed temporary only and shall not affect the civil service or retirement rights of any persons so designated.

5. The authority shall appoint a treasurer and may appoint or employ officers, employees or agents as it may require and prescribe their duties.

6. The directors shall not be paid a salary, but shall be reimbursed or paid for all actual and necessary expenses incurred in the discharge of their duties.

§ 3979. General powers of the authority. Except as otherwise limited by this title, the authority shall have the following powers in addition to those specially conferred elsewhere in this title, subject only to agreements with bondholders:

1. to sue and be sued;

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

3. to make and alter by-laws for its organization and management and, subject to agreements with its bondholders, to make and alter rules and regulations governing the exercise of its powers and fulfillment of its purposes under this title;

4. to make and execute contracts and all other instruments or agreements necessary or convenient to carry out any powers and functions expressly given in this title;

5. to commence any action to protect or enforce any right conferred upon it by any law, contract or other agreement;

6. to borrow money and issue bonds, or to refund the same, and to provide for the rights of the holders of its obligations;

7. to accept gifts, grants, loans or contributions of funds or financial or other aid in any form from the city, state or federal government or any agency or instrumentality thereof, or from any other source and for any of its corporate purposes in accordance with the provisions of this title;

8. to invest any funds held in reserves or sinking funds, or any funds not required for immediate use or disbursement, at the discretion of the authority;

9. to pledge all or any part of its revenues as security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith;

10. to appoint such officers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, and compensation; and to retain or employ counsel, auditors and private financial consultants on a contract basis or otherwise for rendering professional or technical services and advice; 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 of office space deemed necessary or desirable by the authority.

§ 3980. Bonds of the authority. 1. The authority shall have the power and is hereby authorized from time to time to issue bonds, in conformity with applicable provisions of the uniform commercial code, in such principal amounts as it may determine to be necessary, not to exceed the principal aggregate amount of eight billion dollars. The authority shall have the power from time to time to refund any bonds of the authority 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 of the authority then outstanding. Bonds issued by the authority shall be payable solely out of the specific revenues or other moneys of the authority as may be designated in the proceedings of the authority under which the bonds shall be authorized to be issued, and subject to any agreements with the holders of outstanding bonds pledging any particular revenues or moneys.

2. Such bonds shall be authorized by resolution of the authority, shall bear such date and shall mature at such time or times as such resolution may provide. The bonds may be issued as serial bonds or as term bonds or as a combination thereof. The bonds shall bear interest at such rate or rates, be in such denominations and 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 of redemption as such resolution may provide.

3. 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 part of its revenues, together with any other moneys, securities or contracts, to secure the payment of the bonds, 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) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of bonds;

(e) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, including the proportion of bondholders which must consent thereto and the manner in which such consent may be given; and

(f) 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.

4. 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 enter into such agreements for the benefit of the

bondholders as the authority may deem necessary, convenient or desirable concerning the use or disposition of its revenues or other moneys, including the entrusting, pledging or creation of any other security interest in any such revenues, moneys 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 agreements. The authority shall have power to enter into amendments of any such agreements within the powers granted to the authority by this title and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of bonds of the authority.

5. The authority shall have power to contract with holders of any of its bonds as to the custody, collection, securing, investment, and payment of any moneys of the authority, of any moneys held in trust or otherwise for the payment of bonds, and to carry out such contract. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds or notes and deposits of such moneys may be secured in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits.

6. Whether or not the bonds of the authority 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.

7. Neither the directors of the authority nor any person executing bonds shall be liable personally thereon or be subject to any personal liability or accountability solely by reason of the issuance thereof. The bonds or other obligations of the authority shall not be a debt of the state, and the state shall not be liable thereon, nor shall they be payable out of any funds other than those of the authority; and such bonds shall contain on the face thereof a statement to such effect.

8. The authority, subject to such agreements with bondholders as then may exist, shall have power to purchase bonds of the authority out of any moneys available therefor, which shall thereupon be cancelled.

§ 3981. Moneys of the authority. 1. Subject to the provisions of this title, the directors of the authority shall receive, accept, invest, administer, expend and disburse for its corporate purposes all money of the authority from whatever sources derived including (a) payments by the commissioner of taxation and finance or the comptroller pursuant to this title; (b) the proceeds of bonds; (c) the revenues described in subdivision six of this section; and (d) any other payments, gifts, or appropriations to the authority from any other source.

2. Subject to the provisions of any contract with bondholders,

(a) the money of the authority shall be paid to the authority and shall not be commingled with any other money, and

(b) all money received by the authority which, together with other money of the authority available for the operating expenses of the authority, the payment of debt service and payments to reserve funds, exceeds the amount required for such purposes shall be transferred to the state.

3. The money in any of the authority's accounts shall be paid out on checks signed by the treasurer, or by other lawful and appropriate means such as wire or electronic transfer, on requisitions of the chairperson of the authority or of such other officer as the directors shall authorize to make such requisition, or pursuant to a bond resolution or trust indenture.

4. All moneys of the authority from whatever source derived may be paid to the treasurer of the authority and be deposited forthwith in a bank or banks in the state designated by such authority. The moneys in such account may be paid by the treasurer or other agent duly designated by the authority on requisition of the chairman of the board of directors of the authority or of such person or persons as the board may authorize to make such requisitions. All deposits of authority money shall be secured by obligations of the United States or of the state at a market value equal at all times to the amount of the deposit, and all banks and trust companies are authorized to give such security for such deposits.

5. The authority shall have the power, notwithstanding the provisions of this section, to contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any money of the authority or any money held in trust or otherwise for the payment of bonds or in any way to secure bonds, and to carry out any such contract notwithstanding that such contract may be inconsistent with the other provisions of this title. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of such money may be secured in the same manner as money of the authority, and all banks and trust companies are authorized to give such security for such deposits.

6. (a) Revenues of the authority shall include, but not be limited to:

(i) revenues from the additional .25 percent rate of the personal income tax for taxpayers residing in the metropolitan commuter transportation district created and established pursuant to section twelve hundred sixty-two of this chapter with a taxable income greater than five hundred thousand dollars but less than two million dollars as provided by subparagraph (C) of paragraph one of subsection (a), subparagraph (C) of paragraph one of subsection (b) and subparagraph (C) of paragraph one of subsection (c) of section six hundred one of the tax law; and

(ii) annual funding from the city of New York as follows:

(A) for the first fiscal year of the city of New York commencing after the effective date of this title, the amount that such city appropriated for the support of the MTA in the base year plus sixty million dollars;

(B) for the second fiscal year of the city of New York commencing after the effective date of this title, the amount that such city appropriated for the support of the MTA in the base year plus one hundred and twenty million dollars;

(C) for the third fiscal year of the city of New York commencing after the effective date of this title, the amount that such city appropriated for the support of the MTA in the base year plus one hundred and eighty million dollars;

(D) for the fourth fiscal year of the city of New York commencing after the effective date of this title, the amount that such city appropriated for the support of the MTA in the base year plus two hundred and forty million dollars; and

(E) for the fifth fiscal year of the city of New York commencing after the effective date of this title, and for each fiscal year of such city thereafter, the amount that such city appropriated for the support of the MTA in the base year plus three hundred million dollars.

(b) For the purposes of subparagraph (ii) of paragraph (a) of this subdivision, the term "base year" shall mean the fiscal year of the city of New York ending June 30, 2016.

7. Revenues received by the authority pursuant to this section shall be applied in the following order of priority: first pursuant to the authority's contracts with bondholders, then to pay the authority's operating expenses not otherwise provided for.

§ 3982. Use of bond proceeds. The moneys or proceeds received by the authority from the sale of bonds shall be paid to the MTA to be expended for any project capital costs or elements described in the two thousand seventeen through two thousand twenty-one capital program plans as submitted to and approved by the MTA capital program review board pursuant to title eleven of article five of this chapter.

§ 3983. Agreement with state. The state does hereby pledge to and agree with the holders of any bonds issued by the authority under this act that the state will not limit or alter the rights hereby vested in such authority to fulfill the terms of any agreements made with the said holders thereof, or in any way impair the rights and remedies of such holders until such bonds together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds.

§ 3984. Bonds as legal investments. The bonds of the authority are hereby made securities in which all public officers and bodies of this state and all political subdivisions of the state and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities which may be deposited with and may be received by all public officers and bodies of the state and all political subdivisions of the state and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

§ 3985. Exemption from taxation. 1. It is hereby determined that the creation of the authority and the carrying out of its corporate purpose is in all respects a public and governmental purpose for the benefit of the people of the state and for the improvement of their health, safety, welfare, comfort and security, and that said purposes are public purposes and that a corporation will be performing an essential governmental function in the exercise of the powers conferred upon it by this act.

2. The property of the authority and its income and operations shall be exempt from taxation.

3. The bonds of the authority issued pursuant to this act and the income therefrom and all its fees, charges, gifts, grants, revenues, receipts and other moneys received or to be received, pledged to pay, or secure the payment of, such notes or bonds shall at all times be free from taxation, except for estate and gift taxes and taxes on transfers.

§ 3986. Audits. 1. The accounts of the authority shall be subject to the supervision and audit of the comptroller. The comptroller and his or her legally authorized representative are authorized and empowered from time to time to examine the accounts and books of the authority, includ-

ing its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing.

2. The comptroller may require the authority to be the subject of an annual management and financial audit performed by an independent certified accountant selected by the comptroller. Such audited report, together with the audited financial statements of the authority, shall be submitted to the governor, the speaker of the assembly, the temporary president of the senate, and the chair and ranking minority member of the senate finance committee and the chair and ranking minority member of the assembly ways and means committee.

§ 3987. Remedies of bondholders. Subject to any resolution or resolutions adopted by the authority:

1. In the event that the authority shall default in the payment of principal of or interest on any issue of bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the authority shall fail or refuse to comply with the provisions of this title or shall default in any agreement made with the holders of any issue of bonds, the holders of twenty-five percent in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county in which the principal office of the authority is located and proved and acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purpose provided in this section.

2. Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such bonds outstanding shall, in his or her or its own name:

(a) by action or proceeding in accordance with the civil practice law and rules, enforce all rights of the bondholders and require the authority to carry out any other agreements with the holders of such bonds and to perform its duties under this title;

(b) bring an action or proceeding upon such bonds;

(c) by action or proceeding, require the authority to account as if it were the trustee of an express trust for the holders of such bonds;

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

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

3. Such trustee shall, in addition to the provisions of subdivisions one and two of this section, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth in this section or incident to the general representation of bondholders in the enforcement and protection of their rights.

4. The supreme court shall have jurisdiction of any action or proceeding by the trustee on behalf of such bondholders. The venue of any such action or proceeding shall be laid in the county of Albany.

§ 3988. Assistance by state officers, departments, boards and commissions. 1. All other state departments, agencies and public authorities may render such services to the authority within their respective functions as may be requested by such authority.

2. Upon request of the authority, any state department or agency is hereby authorized and empowered to transfer to the authority such offi-

cers and employees as it may deem necessary from time to time to assist such corporation in carrying out its functions and duties under this act. Officers and employees so transferred shall not lose or forfeit their civil service status or rights.

§ 3989. Applicability. Notwithstanding any provision of law contained in this chapter to the contrary, the authority shall be subject to, and be required to comply with, the following provisions set forth in article nine of this chapter only: subparagraphs one, two, three, four and five-a of paragraph (a) of subdivision one of section twenty-eight hundred of this chapter; paragraphs (b) and (c) of subdivision one of section twenty-eight hundred of this chapter; subdivision three of section twenty-eight hundred of this chapter; subdivisions one and three of section twenty-eight hundred one of this chapter; subdivision one of section twenty-eight hundred two of this chapter; section twenty-eight hundred three of this chapter; section twenty-eight hundred five of this chapter; paragraphs (a), (b), (d), (g) and (h) of subdivision one and subdivision two of section twenty-eight hundred twenty-four of this chapter; and sections twenty-eight hundred fifty-six, twenty-eight hundred seventy-nine-a, twenty-eight hundred ninety and twenty-nine hundred twenty-five of this chapter.

§ 2. Paragraph 1 of subsection (a) of section 601 of the tax law is amended by adding a new subparagraph (C) to read as follows:

(C) For taxable years beginning after two thousand seventeen, an additional tax at a rate of .25% over the 6.85% rate established by subparagraph (B) of this paragraph for taxpayers residing in the metropolitan commuter transportation district created and established pursuant to section twelve hundred sixty-two of the public authorities law whose New York taxable income is greater than $500,000 that shall apply to New York taxable income of $500,000 or more but less than $2,000,000.

§ 3. Paragraph 1 of subsection (b) of section 601 of the tax law is amended by adding a new subparagraph (C) to read as follows:

(C) For taxable years beginning after two thousand seventeen, an additional tax at a rate of .25% over the 6.85% rate established by subparagraph (B) of this paragraph for taxpayers residing in the metropolitan commuter transportation district created and established pursuant to section twelve hundred sixty-two of the public authorities law whose New York taxable income is greater than $500,000 that shall apply to New York taxable income of $500,000 or more but less than $2,000,000.

§ 4. Paragraph 1 of subsection (c) of section 601 of the tax law is amended by adding a new subparagraph (C) to read as follows:

(C) For taxable years beginning after two thousand seventeen, an additional tax at a rate of .25% over the 6.85% rate established by subparagraph (B) of this paragraph for taxpayers residing in the metropolitan commuter transportation district created and established pursuant to section twelve hundred sixty-two of the public authorities law whose New York taxable income is greater than $500,000 that shall apply to New York taxable income of $500,000 or more but less than $2,000,000.

§ 5. Notwithstanding any provisions of this act to the contrary, until such time as the metropolitan transportation infrastructure financing authority has issued bonds pursuant to section 3980 of the public authorities law and received the proceeds from the sale or issuance of such bonds, such authority shall distribute the revenue received pursuant to subdivision 6 of section 3981 of such law in accordance with the provisions of section 3982 of such law.

§ 6. This act shall take effect immediately.