STATE OF NEW YORK

5403

2017-2018 Regular Sessions

IN ASSEMBLY

February 8, 2017

Introduced by M. of A. BRINDISI -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to the computation of foundation aid and addition of credit recovery aid for the Maisto Districts; to amend the local finance law, in relation to calculation of the period of probable usefulness regarding payment for Maisto Districts credit recovery aid; to amend the public authorities law, in relation to contracts between the dormitory authority and the Maisto Districts or the New York state association of small city school districts; and to amend the state finance law, in relation to establishing the credit recovery financing reserve fund

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

Section 1. Legislative intent: It is the responsibility of the legislature under article XI of the constitution of the state of New York to establish and maintain a system that will provide all children an opportunity to receive a meaningful high school education. As a result of trial in State Supreme Court of **Maisto, et al. v State of New York** it is clear that resources sufficient to offer that education in eight small city school districts, known as the Maisto Districts, are not being provided to those districts under current education law. Therefore, it is the intention of the legislature to amend certain provisions of the education law to ensure that the necessary funding is available in those districts to help them provide all their children an opportunity to receive a meaningful high school education and to maintain healthy vibrant educational communities that underpin a thriving state economy.

§ 2. This legislation shall be known and may be cited as "the Maisto District successful schools act".

§ 3. Paragraph ff of subdivision 1 of section 3602 of the education law, as added by section 25 of part A of chapter 58 of the laws of 2011, is amended to read as follows:

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

LBD05724-01-7

ff. "Preliminary growth amount" shall mean the difference between the statewide total, excluding the apportionments computed pursuant to subdivisions four**, other than such apportionments for Maisto Districts,** and seventeen of section thirty-six hundred two of the education law, of the apportionments due and owing during the current school year, commencing with the two thousand twelve--two thousand thirteen school year, to school districts and boards of cooperative educational services from the general support for public schools as computed based on an electronic data file used to produce the school aid computer listing produced by the commissioner in support of the enacted budget for the current year, less the statewide total of such apportionments, excluding the apportionments computed pursuant to subdivisions four**, other than such apportionments for Maisto Districts,** and seventeen of section thirty-six hundred two of the education law, due and owing during the base school year to school districts and boards of cooperative educational services from the general support for public schools as computed based on an electronic data file used to produce the school aid computer listing produced by the commissioner in support of the enacted budget for the current year.

§ 4. Subdivision 1 of section 3602 of the education law is amended by adding two new paragraphs hh and ii to read as follows:

hh. "New York state association of small city school districts" shall mean the association of districts in cities with populations fewer than one hundred twenty-five thousand persons in the most recent census.

ii. "Maisto Districts" shall mean the small city school districts of Jamestown, Kingston, Mount Vernon, Newburgh, Niagara Falls, Port Jervis, Poughkeepsie and Utica.

§ 5. Subdivision 18 of section 3602 of the education law, as added by section 37 of part A of chapter 58 of the laws of 2011, is amended to read as follows:

18. Allocable growth amount apportionment. Such amount shall be apportioned for a school year pursuant to a chapter of the laws of New York enacted for the state fiscal year in which such school year commences, and shall be allocated to purposes including but not limited to competitive grant awards made pursuant to subdivisions five and six of section thirty-six hundred forty-one of this article, the foundation aid phase-in amount or other foundation aid increase allocated pursuant to subdivision four of this section and the gap elimination adjustment restoration amount apportioned pursuant to subdivision seventeen of this section. In the event that a chapter of the laws of New York enacted for the state fiscal year in which such school year commences is not enacted, the allocations in support of subdivisions five and six of section thirty-six hundred forty-one of this article shall equal the allocations in support of such awards in the base year, and the apportionments pursuant to subdivisions four and seventeen of this section for the current year shall equal the apportionments for such subdivisions four and seventeen for the base year **except that the apportionments of the foundation aid phase-in amount for the Maisto Districts and Maisto District credit recovery aid shall be the amount computed in the current year**.

§ 6. The opening paragraph, subparagraph 1 of paragraph a, and clause (ii) of subparagraph 2 of paragraph b of subdivision 4 of section 3602 of the education law, as amended by section 7 of part A of chapter 54 of the laws of 2016, are amended to read as follows:

In addition to any other apportionment pursuant to this chapter, a school district, other than a special act school district as defined in

subdivision eight of section four thousand one of this chapter, shall be eligible for total foundation aid equal to the product of total aidable foundation pupil units multiplied by the district's selected foundation aid, which shall be the greater of five hundred dollars ($500) or foundation formula aid, provided, however that for the two thousand seven--two thousand eight through two thousand eight--two thousand nine school years, no school district shall receive total foundation aid in excess of the sum of the total foundation aid base for aid payable in the two thousand seven--two thousand eight school year computed pursuant to subparagraph (i) of paragraph j of subdivision one of this section, plus the phase-in foundation increase computed pursuant to paragraph b of this subdivision, and provided further that for the two thousand twelve--two thousand thirteen school year, no school district shall receive total foundation aid in excess of the sum of the total foundation aid base for aid payable in the two thousand eleven--two thousand twelve school year computed pursuant to subparagraph (ii) of paragraph j of subdivision one of this section, plus the phase-in foundation increase computed pursuant to paragraph b of this subdivision, and provided further that for the two thousand thirteen--two thousand fourteen school year and thereafter, no school district shall receive total foundation aid in excess of the sum of the total foundation aid base computed pursuant to subparagraph (ii) of paragraph j of subdivision one of this section, plus the phase-in foundation increase computed pursuant to paragraph b of this subdivision, and provided further that for the two thousand sixteen--two thousand seventeen school year, no eligible school districts shall receive total foundation aid in excess of the sum of the total foundation aid base computed pursuant to subparagraph (ii) of paragraph j of subdivision one of this section plus the sum of (A) the phase-in foundation increase, (B) the executive foundation increase with a minimum increase pursuant to paragraph b-2 of this subdivision, and (C) an amount equal to "COMMUNITY SCHOOLS AID" in the computer listing produced by the commissioner in support of the executive budget request for the two thousand sixteen--two thousand seventeen school year and entitled "BT161-7", where (1) "eligible school district" shall be defined as a district with (a) an unrestricted aid increase of less than seven percent (0.07) and (b) a three year average free and reduced price lunch percent greater than fifteen percent (0.15), and (2) "unrestricted aid increase" shall mean the quotient arrived at when dividing (a) the sum of the executive foundation aid increase plus the gap elimination adjustment for the base year, by (b) the difference of foundation aid for the base year less the gap elimination adjustment for the base year, and (3) "executive foundation increase" shall mean the difference of (a) the amounts set forth for each school district as "FOUNDATION AID" under the heading "2016-17 ESTIMATED AIDS" in the school aid computer listing produced by the commissioner in support of the executive budget request for the two thousand sixteen--two thousand seventeen school year and entitled "BT161-7" less (b) the amounts set forth for each school district as "FOUNDATION AID" under the heading "2015-16 BASE YEAR AIDS" in such computer listing and provided further that total foundation aid shall not be less than the product of the total foundation aid base computed pursuant to paragraph j of subdivision one of this section and the due-minimum percent which shall be, for the two thousand twelve--two thousand thirteen school year, one hundred and six-tenths percent (1.006) and for the two thousand thirteen--two thousand fourteen school year for city school districts of those cities having populations in excess of one hundred twenty-five thousand and less than one million

inhabitants one hundred and one and one hundred and seventy-six thousandths percent (1.01176), and for all other districts one hundred and three-tenths percent (1.003), and for the two thousand fourteen--two thousand fifteen school year one hundred and eighty-five hundredths percent (1.0085), and for the two thousand fifteen--two thousand sixteen school year, one hundred thirty-seven hundredths percent (1.0037), subject to allocation pursuant to the provisions of subdivision eighteen of this section and any provisions of a chapter of the laws of New York as described therein, nor more than the product of such total foundation aid base and one hundred fifteen percent, provided, however, that for the two thousand sixteen--two thousand seventeen school year such maximum shall be no more than the sum of (i) the product of such total foundation aid base and one hundred fifteen percent plus (ii) the executive foundation increase and plus (iii) "COMMUNITY SCHOOLS AID" in the computer listing produced by the commissioner in support of the executive budget request for the two thousand sixteen--two thousand seventeen school year and entitled "BT161-7"**, except for Maisto Districts which shall be one hundred twenty-five percent,** and provided further that for the two thousand nine--two thousand ten through two thousand eleven--two thousand twelve school years, each school district shall receive total foundation aid in an amount equal to the amount apportioned to such school district for the two thousand eight--two thousand nine school year pursuant to this subdivision. Total aidable foundation pupil units shall be calculated pursuant to paragraph g of subdivision two of this section. For the purposes of calculating aid pursuant to this subdivision, aid for the city school district of the city of New York shall be calculated on a citywide basis.

(1) The foundation amount shall reflect the average per pupil cost of general education instruction in successful school districts, as determined by a statistical analysis of the costs of special education and general education in successful school districts, provided that the foundation amount shall be adjusted annually to reflect the percentage increase in the consumer price index as computed pursuant to section two thousand twenty-two of this chapter, provided that for the two thousand eight--two thousand nine school year, for the purpose of such adjustment, the percentage increase in the consumer price index shall be deemed to be two and nine-tenths percent (0.029), and provided further that the foundation amount for the two thousand seven--two thousand eight school year shall be five thousand two hundred fifty-eight dollars, and provided further that for the two thousand seven--two thousand eight through two thousand sixteen--two thousand seventeen school years, **and for the Maisto Districts for the two thousand eighteen--two thousand nineteen through two thousand twenty-one--two thousand twenty-two school years,** the foundation amount shall be further adjusted by the phase-in foundation percent established pursuant to paragraph b of this subdivision.

(ii) Phase-in foundation increase factor. For the two thousand eleven--two thousand twelve school year, the phase-in foundation increase factor shall equal thirty-seven and one-half percent (0.375) and the phase-in due minimum percent shall equal nineteen and forty-one hundredths percent (0.1941), for the two thousand twelve--two thousand thirteen school year the phase-in foundation increase factor shall equal one and seven-tenths percent (0.017), for the two thousand thirteen--two thousand fourteen school year the phase-in foundation increase factor shall equal (1) for a city school district in a city having a population of one million or more, five and twenty-three hundredths percent

(0.0523) or (2) for all other school districts zero percent, for the two thousand fourteen--two thousand fifteen school year the phase-in foundation increase factor shall equal (1) for a city school district of a city having a population of one million or more, four and thirty-two hundredths percent (0.0432) or (2) for a school district other than a city school district having a population of one million or more for which (A) the quotient of the positive difference of the foundation formula aid minus the foundation aid base computed pursuant to paragraph j of subdivision one of this section divided by the foundation formula aid is greater than twenty-two percent (0.22) and (B) a combined wealth ratio less than thirty-five hundredths (0.35), seven percent (0.07) or (3) for all other school districts, four and thirty-one hundredths percent (0.0431), and for the two thousand fifteen--two thousand sixteen school year the phase-in foundation increase factor shall equal: (1) for a city school district of a city having a population of one million or more, thirteen and two hundred seventy-four thousandths percent (0.13274); or (2) for districts where the quotient arrived at when dividing (A) the product of the total aidable foundation pupil units multiplied by the district's selected foundation aid less the total foundation aid base computed pursuant to paragraph j of subdivision one of this section divided by (B) the product of the total aidable foundation pupil units multiplied by the district's selected foundation aid is greater than nineteen percent (0.19), and where the district's combined wealth ratio is less than thirty-three hundredths **percent** (0.33), seven and seventy-five hundredths percent (0.0775); or (3) for any other district designated as high need pursuant to clause (c) of subparagraph two of paragraph c of subdivision six of this section for the school aid computer listing produced by the commissioner in support of the enacted budget for the two thousand seven--two thousand eight school year and entitled "SA0708", four percent (0.04); or (4) for a city school district in a city having a population of one hundred twenty-five thousand or more but less than one million, fourteen percent (0.14); or (5) for school districts that were designated as small city school districts or central school districts whose boundaries include a portion of a small city for the school aid computer listing produced by the commissioner in support of the enacted budget for the two thousand fourteen--two thousand fifteen school year and entitled "SA1415", four and seven hundred fifty-one thousandths percent (0.04751); or (6) for all other districts one percent (0.01), and for the two thousand sixteen--two thousand seventeen school year shall equal for an eligible school district the greater of: (1) for a city school district in a city with a population of one million or more, seven and seven hundred eighty four thousandths percent (0.07784); or (2) for a city school district in a city with a population of more than two hundred fifty thousand but less than one million as of the most recent federal decennial census, seven and three hundredths percent (0.0703); or (3) for a city school district in a city with a population of more than two hundred thousand but less than two hundred fifty thousand as of the most recent federal decennial census, six and seventy-two hundredths percent (0.0672); or (4) for a city school district in a city with a population of more than one hundred fifty thousand but less than two hundred thousand as of the most recent federal decennial census, six and seventy-four hundredths percent (0.0674); or (5) for a city school district in a city with a population of more than one hundred twenty-five thousand but less than one hundred fifty thousand as of the most recent federal decennial census, nine and fifty-five hundredths percent (0.0955); or (6) for school districts that

were designated as small city school districts or central school districts whose boundaries include a portion of a small city for the school aid computer listing produced by the commissioner in support of the enacted budget for the two thousand fourteen--two thousand fifteen school year and entitled "SA141-5" with a combined wealth ratio less than one and four tenths (1.4), nine percent (0.09), provided, however, that for such districts that are also districts designated as high need urban-suburban pursuant to clause (c) of subparagraph two of paragraph c of subdivision six of this section for the school aid computer listing produced by the commissioner in support of the enacted budget for the two thousand seven--two thousand eight school year and entitled "SA0708", nine and seven hundred and nineteen thousandths percent (0.09719); or (7) for school districts designated as high need rural pursuant to clause (c) of subparagraph two of paragraph c of subdivision six of this section for the school aid computer listing produced by the commissioner in support of the enacted budget for the two thousand seven--two thousand eight school year and entitled "SA0708", thirteen and six tenths percent (0.136); or (8) for school districts designated as high need urban-suburban pursuant to clause (c) of subparagraph two of paragraph c of subdivision six of this section for the school aid computer listing produced by the commissioner in support of the enacted budget for the two thousand seven--two thousand eight school year and entitled "SA0708", seven hundred nineteen thousandths percent (0.00719); or (9) for all other eligible school districts, forty-seven hundredths percent (0.0047) and for the two thousand seventeen--two thousand eighteen school year and thereafter the commissioner shall annually determine the phase-in foundation increase factor subject to allocation pursuant to the provisions of subdivision eighteen of this section and any provisions of a chapter of the laws of New York as described therein**, except that for Maisto Districts in the two thousand seventeen--two thousand eighteen school year twenty-five hundredths percent (0.0025), in the two thousand eighteen--two thousand nineteen school year five hundredths percent (0.0050), in the two thousand nineteen--two thousand twenty school year seventy-five hundredths percent (0.0075) and in the two thousand twenty--two thousand twenty-one school year and thereafter one hundred hundredths percent (0.0100)**.

§ 7. Section 3602 of the education law is amended by adding a new subdivision 42 to read as follows:

42. Maisto District credit recovery aid. Commencing with aid payable in the two thousand eighteen--two thousand nineteen school year through the two thousand twenty-one--two thousand twenty-two school year Maisto Districts shall be eligible for an additional apportionment as provided for in this subdivision. Such districts shall be eligible for an additional apportionment in an amount equal to the product of the total number of students in the two thousand thirteen, two thousand fourteen, two thousand fifteen, two thousand sixteen and two thousand seventeen cohorts multiplied by one minus the four year graduation rate for the year prior to the base year and two thousand five hundred ($2,500) dollars to be used for programs with respect to such students approved by the commissioner for the following purposes:

a. credit recovery programs;

b. academic intervention services;

c. response to intervention services;

d. drop out prevention;

e. incarcerated youth services;

f. parent involvement programs;

g. extended day and extended year programs; and

h. psycho-social testing.

§ 8. Section 2530 of the education law, as amended by chapter 171 of the laws of 1996, is amended to read as follows:

§ 2530. Power to contract indebtedness. Each city school district shall be authorized to expend money for any of the objects or purposes which it is authorized to accomplish by law and may contract indebtedness in its name pursuant to the local finance law**, including but not limited to the issuance of bonds of the district or of the New York state association of small city school districts, its affiliates, subsidiaries or subdivisions thereof to be repaid by revenues from Maisto District credit recovery aid pursuant to subdivision forty-two of section thirty-six hundred two of this chapter. Notwithstanding any other provision of law to the contrary, each district, the New York state association of small city school districts, and affiliates, subsidiaries or subdivisions thereof shall have the power to pledge, assign or otherwise make available as security for such indebtedness without consideration, revenues from state aid under subdivision forty-two of section thirty-six hundred two of this chapter and bonds or other indebtedness in connection with such subdivision forty-two shall not require voter approval**. The provisions of section four hundred sixteen of this chapter shall be applicable to such districts.

§ 9. Paragraph a of section 11.00 of the local finance law is amended by adding a new subparagraph 109 to read as follows:

109. Payment by small city school districts for objects and purposes set forth in subdivision forty-two of section thirty-six hundred two of the education law and authorized under section twenty-five hundred thirty of the education law, ten years.

§ 10. Paragraph (b) of subdivision 2 of section 1676 of the public authorities law is amended by adding a new undesignated paragraph to read as follows:

Maisto Districts as defined by paragraph ii of subdivision one of section thirty-six hundred two of the education law and the New York state association of small city school districts as defined by paragraph hh of subdivision one of section thirty-six hundred two of the education law, and affiliates, subsidiaries or subdivisions thereof.

§ 11. Subdivision 1 of section 1680 of the public authorities law is amended by adding a new undesignated paragraph to read as follows:

Maisto Districts as defined by paragraph ii of subdivision one of section thirty-six hundred two of the education law and the New York state association of small city school districts as defined by paragraph hh of subdivision one of section thirty-six hundred two of the education law, and affiliates, subsidiaries or subdivisions thereof.

§ 12. Section 1680 of the public authorities law is amended by adding a new subdivision 41 to read as follows:

41. a. The dormitory authority may enter contracts to loan to or other agreements with the Maisto Districts, the New York state association of small city school districts, and affiliates, subsidiaries or subdivisions thereof for the financing of programs as specified in subdivision forty-two of section thirty-six hundred two of the education law including:

(1) credit recovery programs;

(2) academic intervention services;

(3) response to intervention services;

(4) drop out prevention;

(5) incarcerated youth services;

(6) parent involvement programs;
(7) extended day and extended year programs; and
(8) psycho-social testing.

Such programs shall be subject to the approval of the commissioner of education.

b. Each Maisto District, the New York state association of small city school districts, and affiliates, subsidiaries or subdivisions thereof shall, notwithstanding any other provision of law, have the power to pledge, assign or otherwise make available to the dormitory authority without consideration, revenues from state aid under subdivision forty-two of section thirty-six hundred two of the education law satisfactory to the dormitory authority.

c. In addition to providing for all other matters deemed necessary and proper, such contracts to loan or other agreements shall: (1) require payment to the dormitory authority the amount required to pay the principal of and interest on obligations of the dormitory authority issued in relation to providing such financing and all incidental expenses of the dormitory authority incurred in relation thereto; (2) require payment sufficient to meet obligations under such contracts to loan or other agreements; (3) provide that the aid payable under subdivision forty-two of section thirty-six hundred two of the education law shall be the sole security for such financing and all incidental expenses; and (4) not be executed until such programs are approved by the commissioner of education.

d. (1) In the event that the Maisto Districts, the New York state association of small city school districts, and affiliates, subsidiaries or subdivisions thereof fail to make any payment of principal or interest on its obligations, the dormitory authority shall certify to the comptroller of such failure. Such certificate shall be in such form as the authority deems desirable, but shall include the exact amount of interest and principal required to satisfy the obligations to the authority.

(2) The comptroller, upon receipt of such certificate from the authority, shall withhold from the Maisto Districts, the New York state association of small city school districts, and affiliates, subsidiaries or subdivisions thereof any state aid payable to such entity to the extent necessary to meet the certified amount of interest or principal and shall immediately pay over to the credit recovery financing reserve fund the amount so withheld.

(3) Pending payment to the authority from the comptroller of any such state aid withheld, the authority shall, if payments of interest or principal are due on the authority's bonds, withdraw an amount sufficient to meet such amounts withheld from the debt service reserve fund securing such bonds. Any such amount withdrawn from such debt service reserve fund shall be paid into such debt service reserve fund upon receipt by the agency from the comptroller of any state aid withheld. Any amount so paid to the authority from such state aid shall not obligate the state to make, nor entitle the Maisto Districts, the New York state association of small city school districts, and affiliates, subsidiaries or subdivisions thereof to receive, any additional amounts of state aid.

e. On or before November fifteenth of each year, the dormitory authority shall submit, and thereafter may resubmit, to the director of the budget, the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee a report setting forth the amounts, if any, of all amounts estimated to

become due in the succeeding state fiscal year to the dormitory authority from each Maisto District, the New York state association of small city school districts, and affiliates, subsidiaries or subdivisions thereof pursuant to such contracts to loan or other agreements. The state comptroller shall pay over to the dormitory authority, pursuant to appropriations therefor and solely from moneys available in the credit recovery financing reserve fund established by section ninety-nine-g of the state finance law, the amount set forth in such report at the times and in the amounts set forth in the certificate filed with the comptroller by the dormitory authority.

f. Each Maisto District, the New York state association of small city school districts, and affiliates, subsidiaries or subdivisions thereof which elects to avail itself of the provisions of this section shall have established with the state comptroller a credit recovery financing reserve account which shall be used to pay to the dormitory authority the annual amounts payable to the dormitory authority under such contracts to loan or other agreements pursuant to the provisions of this section and section ninety-nine-g of the state finance law. The dormitory authority shall identify to the state comptroller and to the commissioner of education with respect to such financing, each Maisto District, the New York state association of small city school districts, and affiliates, subsidiaries or subdivisions thereof with which it has such contracts to loan or other agreements pursuant to this section and shall annually certify the amounts required to be paid pursuant to such contracts to loan or other agreements.

g. All state and local officials are authorized and required to take whatever actions are necessary to carry out the provisions of this section and the provisions of any contract to loan or other agreements entered into pursuant to this section, including making the required payments to the dormitory authority.

§ 13. The state finance law is amended by adding a new section 99-g to read as follows:

§ 99-g. Credit recovery financing reserve fund. 1. There is hereby established in the custody of the state comptroller a special fund to be known as the credit recovery financing reserve fund. Within such fund, there is hereby established a special account for each Maisto District, the New York state association of small city school districts, and each affiliate, subsidiary or subdivision thereof which enters into a contract to loan or other agreement with the dormitory authority pursuant to this section.

2. Notwithstanding the provisions of any other law, such fund shall consist of aid payable under subdivision forty-two of section thirty-six hundred two of the education law. The comptroller shall maintain sufficient amounts in the fund in order to pay when due amounts due to the dormitory authority pursuant to any contract to loan or other agreement entered into pursuant to the provisions of this section. The dormitory authority shall certify to the state comptroller the dates and amount of such annual payments as scheduled in its contracts to loan or other agreements. The commissioner of education shall certify the amount of payments due the fund from aid payable under subdivision forty-two of section thirty-six hundred two of the education law.

3. Revenues in any special account in the credit recovery financing reserve fund may be commingled with any other monies in such fund. All deposits of such revenues with banks and trust companies shall be secured by obligations of the United States or of the state of New York or its political subdivisions. Such obligations shall have a market

value at least equal at all times to, but not less than, one hundred five percent of the amount of such deposits. All banks and trust companies are authorized to give security for such deposits. Any such revenues in such fund may, in the discretion of the comptroller, be invested in obligations of the United States or the state or obligations the principal of and interest on which are guaranteed by the United States or by the state. Any interest earned shall be credited to such fund.

4. Upon receipt by the comptroller of a certificate or certificates from the dormitory authority that it requires a payment or payments from the appropriate special account in order for any Maisto District, the New York state association of small city school districts, and affiliates, subsidiaries or subdivisions thereof to comply with such contract to loan or other agreement pursuant to this section, each of which certificates shall specify the required payment or payments and the date when the payment or payments is required, the comptroller shall pay from such special account on or before the specified date or within thirty days after receipt of such certificate or certificates, whichever is later, to the paying agent designated by the dormitory authority in any such certificate, the amount or amounts so certified.

5. All payments of money from the credit recovery financing reserve fund shall be made on the audit and warrant of the state comptroller.

§ 14. This act shall take effect July 1, 2017.