STATE OF NEW YORK

5747

2017-2018 Regular Sessions

IN ASSEMBLY

February 15, 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, in relation to establishing the New York city eastside finance corporation

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 1-A to read as follows:

TITLE 1-A

NEW YORK CITY EASTSIDE FINANCE CORPORATION ACT

Section 3700. Short title.
3701. Definitions.
3702. New York city eastside finance corporation.
3703. Administration of the corporation.
3704. General powers of the corporation.
3705. Revenues of the corporation.
3706. Moneys of the corporation.
3707. Bonds of the corporation.
3708. City liable on bonds.
3709. Auditing and reporting requirements.
3710. Assistance to the corporation.

§ 3700. Short title. This title shall be known and may be cited as the "New York City eastside finance corporation act".

§ 3701. Definitions. For the purposes of this title, unless the context otherwise requires:

1. "Base year" means the two thousand seventeen calendar year.

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

3. "City" means the city of New York.

4. "Corporation" means the public benefit corporation created by this title.

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

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5. "Costs" means costs providing for the construction, reconstruction, acquisition or installation of physical public betterments or improvements, or the costs of any preliminary studies, surveys, maps, plans, estimates and hearings, 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.

6. "Eastside district" means the territory in the borough of Manhattan bounded and described as follows: the district shall be bounded in the west by Fifth Avenue, in the north by East 125th Street, in the east by the FDR Drive, and in the south by East 42nd Street.

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

8. "Revenues" means the tax revenues and all aid, rents, fees, charges, payments and the income and receipts paid or payable to the corporation or a director for the account of the corporation.

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

§ 3702. New York city eastside finance corporation. 1. The city shall establish a local development corporation pursuant to section fourteen hundred eleven of the not-for-profit corporation law, to be called the "New York city eastside finance corporation". The corporation shall be a corporate governmental agency constituting a public benefit corporation and an instrumentality of the state.

2. The purpose of the corporation shall be to lessen the burdens of government for the state and city of New York; to act in the public interest through the financing of capital projects of the city and of the New York city transit authority, and of capital projects or elements related to the Second Avenue subway; and to provide for additional and maximum employment.

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

§ 3703. Administration of the corporation. 1. The corporation shall be administered by seven directors, consisting of:

(a) the director of the division of budget of the state of New York;

(b) the director of management and budget of the city of New York;

(c) one appointee by the governor of the state of New York;

(d) one appointee by the speaker of the New York city council;

(e) two appointees by the mayor of the city of New York; and

(f) one appointee by the chief executive officer of the MTA.

2. The director of management and budget of the city of New York shall serve as chairperson of the corporation. The chairperson or his or her designee shall preside over all meetings of the directors and shall have such other duties as may be fixed by the directors.

3. Three directors shall constitute a quorum for the transaction of any business or the exercise of any power of the corporation. No action shall be taken by the corporation except pursuant to a favorable vote of at least three 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 corporation, designate an alternate or alternates 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 paragraph. 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.

4. The corporation shall appoint a treasurer and may appoint such other officers as it may require and prescribe their duties.

§ 3704. General powers of the corporation. In addition to any specific powers conferred to the corporation pursuant to this title, the corporation shall have all the powers set forth in paragraph (c) of section fourteen hundred eleven of the not-for-profit corporation law, subject only to agreements with bondholders.

§ 3705. Revenues of the corporation. 1. The revenues of the corporation shall be generated as follows: the amount equal to the difference of the amount of the real property tax received or collected by the city pursuant to title three of article nine of the real property tax law in the base year and the real property tax received or collected by the city in each succeeding calendar year on taxable real property located within the eastside district.

2. The city shall make an annual appropriation to the corporation of the amount described in subdivision one of this section.

3. (a) The revenues of the corporation may only be used for the payment of debt service, payments to reserve funds, if applicable, and for operating or administrative expenses of the corporation.

(b) If there are insufficient funds paid to the corporation in the first five years of the formation of the corporation to pay the debt service on its bonds, the city shall be responsible for and liable to pay the debt service of the corporation. The corporation shall enter into an agreement with the city to reimburse the city for any payments made on behalf of the corporation pursuant to this paragraph.

§ 3706. Moneys of the corporation. 1. Subject to the provisions of this title, the directors of the corporation shall receive, accept, invest, administer, expend and disburse for its corporate purposes all money of the corporation from whatever sources derived including: (a) the revenues described in section thirty-seven hundred five of this title; (b) the proceeds of bonds; and (c) any other appropriations, grants, payments or gifts to the corporation from any other source.

2. All moneys of the corporation from whatever source derived shall be paid to the treasurer of the corporation and shall be deposited forthwith in a bank or trust company in the state designated by the board of directors. The moneys in such accounts shall be paid out by check signed by the treasurer upon requisition by the board of directors or of such other person or persons as the board may authorize to make such requisitions. All deposits of corporation money shall be secured by obligations of the United States or of the state or of the city 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.

3. The corporation 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 corporation 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 corporation, and all banks and trust companies are authorized to give such security for such deposits.

4. Subject to the provisions of any contract with bondholders: (a) the money of the corporation shall be paid to the corporation and shall not be commingled with any other money, and (b) all money received by the

corporation which, together with other money of the corporation available for the operating expenses of the corporation, the payment of debt service and payments to reserve funds, exceeds the amount required for such purposes shall be transferred to the city.

§ 3707. Bonds of the corporation. 1. (a) The corporation shall have the power and is hereby authorized to issue bonds, in conformity with applicable provisions of the uniform commercial code, in such principal amounts as can be supported by the revenues of the corporation. The corporation shall have the power from time to time to refund any bonds of the corporation 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 corporation then outstanding. Bonds issued by the corporation shall be payable solely out of particular revenues or other moneys of the corporation as may be designated in the proceedings of the corporation under which the bonds shall be authorized to be issued, subject to any agreements entered into between the corporation and the city, and subject to any agreements with the holders of outstanding bonds pledging any particular revenues or moneys.

(b) The proceeds from any bonds issued by the corporation shall be distributed as follows: fifty percent of the proceeds to the city general fund to pay for capital projects contained in the city's most recent capital plan; twenty-five percent to the New York city transit authority to pay for costs of its facilities, supplies, material or equipment; and twenty-five percent to MTA to pay for costs associated with the completion of the Second Avenue subway line.

2. The corporation is authorized to obtain insurance, letters of credit and other credit or liquidity facilities related to bonds in accordance with paragraph a and paragraphs c through g of section 168.00 of the local finance law, as amended from time to time; provided, however, that the board of directors of the corporation shall make the determination as to "financially responsible parties" required under the local finance law.

3. The corporation: (a) shall amortize its serial and term bonds in accordance with sections 11.00, 21.00 and 57.00 of the local finance law and its bond anticipation notes in accordance with section 23.00 of the local finance law, as amended from time to time, (b) shall establish provisions relating to redemption of its bonds that conform with section 53.00 of the local finance law, as amended from time to time, (c) may issue bonds with variable rates of interest, and enter into agreements related thereto, subject to the limitations prescribed in paragraphs a and c of section 54.90 of the local finance law, other than the limitation therein on the total principal amount of such variable rate bonds, and (d) shall not issue refunding bonds without meeting the standards of subparagraph (a) or (b) of subdivision two of paragraph b of section 90.10 of the local finance law. In addition, except as provided in this title, bonds of the corporation shall be subject to all other provisions of the local finance law, as amended from time to time, applicable to bonds of the city of New York, except where application of such law to bonds of the corporation would be inappropriate.

4. The directors may delegate to the chairperson of the corporation the power to set the final terms of bonds.

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 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;

(f) defining the acts or omissions to act which may constitute a default in the obligations and duties of the corporation 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.

6. In addition to the powers herein conferred upon the corporation to secure its bonds, the corporation shall have power in connection with the issuance of bonds to enter into such agreements for the benefit of the bondholders as the corporation 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 corporation would have the right to do in the absence of such agreements. The corporation shall have power to enter into amendments of any such agreements within the powers granted to the corporation 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 corporation.

7. Notwithstanding any provision of the uniform commercial code to the contrary, any pledge of or other security interest in revenues, moneys, accounts, contract rights, general intangibles or other personal property made or created by the corporation 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 corporation irrespective of whether or not such parties have notice thereof. No instrument by which such a pledge or security interest is created or any financing statement need be recorded or filed.

8. Whether or not the bonds of the corporation 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 directors of the corporation 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.

§ 3708. City liable on bonds. The bonds or other obligations of the corporation issued pursuant to this title shall be a debt of the city.

The city shall be liable on such bonds, which shall be payable out of any funds of the city in addition to those of the corporation; and such bonds shall contain on the face thereof a statement to such effect.

§ 3709. Auditing and reporting requirements. The accounts of the corporation shall be subject to the supervision of the comptroller of the city and an annual audit shall be performed by an independent certified accountant. The corporation shall annually submit annual and budget reports pursuant to the provisions of title one of article nine of this chapter, and a copy of such reports shall also be submitted to the city council of the city of New York. The city comptroller or his or her legally authorized representative are authorized and empowered from time to time to examine the accounts and books of the corporation, including its receipts, disbursements, contracts, leases, investments and any other records and papers relating to its financial standing.

§ 3710. Assistance to the corporation. With the consent of the governor or the mayor of the city of New York, as the case may be, the corporation may use employees and facilities of the state or city of New York paying to the affected agency its agreed proportion of the compensation or costs.

§ 2. This act shall take effect immediately.