STATE OF NEW YORK

4303

2017-2018 Regular Sessions

IN SENATE

February 8, 2017

Introduced by Sen. AKSHAR -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, in relation to the creation of a debt management board, using surplus moneys to reduce outstanding state funded debt and limiting the amount of state funded debt that may be incurred; to amend the public authorities law, in relation to defining and listing public authorities, limiting the debt of public authorities, the approval by the comptroller of the terms and conditions of bonds or notes issued by public authorities, the powers and duties of the public authorities control board, and the issuance of bonds and notes of the New York state thruway authority; and to repeal article 5-B of the state finance law relating to limitations on state-supported debt

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

Section 1. Article 5-B of the state finance law is REPEALED and a new article 5-B is added to read as follows:

ARTICLE 5-B
DEBT MANAGEMENT BOARD
AND
LIMITATIONS ON STATE FUNDED DEBT

Section 67-a. Definitions.
67-b. Use of surplus moneys to reduce outstanding state funded debt.
67-c. New York state debt management board; creation; procedure.
67-d. Powers and duties of the board.
67-e. Comptroller's duties with respect to board.
67-f. Limitations on state funded debt and state debt service payments.

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

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§ 67-a. Definitions. As used in this article and article five-C of this chapter the following terms shall have the meanings set forth below:

1. "Board" shall mean the New York state debt management board established by section sixty-seven-c of this article.

2. "Capital purpose" shall mean any project involving:

(a) the acquisition, construction, demolition or replacement of a fixed asset;

(b) the major repair or renovation of a fixed asset, which materially extends its useful life or materially improves or increases its capacity;

(c) the planning or design of the acquisition, construction, demolition, replacement, major repair or renovation of a fixed asset, including the preparation and review of plans and specifications including engineering and other services, field surveys and sub-surface investigations incidental thereto; or

(d) the costs of issuing debt obligations to finance a capital purpose.

3. "Cash surplus" shall mean the amount by which general fund receipts in a fiscal year exceed general fund expenditures in such fiscal year.

4. "Conduit debt obligations" shall mean a debt obligation issued by a public authority (hereinafter referred to in this subdivision as the "conduit issuer") on behalf of a third party (hereinafter referred to in this subdivision as the "conduit borrower") other than the state or a political subdivision of the state, where payment of the obligation is to be made from funds of the conduit borrower, the security for the obligation is the credit of the conduit borrower and no funds of the conduit issuer, the state or a political subdivision of the state are pledged to secure the obligation, whether or not the obligation of the conduit issuer, the state or political subdivision of the state is subject to appropriation or is otherwise contingent.

5. "State backed debt" shall mean any debt or obligation, other than state debt, that is supported in whole or in part by any financing arrangement whereby the state agrees or has in the past agreed, whether by law, contract or otherwise, to make payments which will be used, directly or indirectly, for the payment of principal, interest or related payments on indebtedness incurred or contracted by the state itself for any purpose, or by any state agency, municipality, individual, public authority or other public or private corporation or any other entity for state capital or operating purposes or to finance grants, loans or other assistance payments made or to be made by or on behalf of the state for any purpose. If the state agrees to make future revenues from a specific state source available for the purpose of supporting debt of any municipality, individual, public authority or other public or private corporation or any other entity, such debt shall be considered to be a debt for the purpose of financing a state grant, loan or other assistance payment and shall be a "state backed debt" for the purposes of this article. The term "state backed debt" applies to all debt or obligations described in this subdivision for which the state agrees, or has in the past agreed, to make payments (a) whether or not the obligation of the state to make payments is subject to appropriation or is otherwise contingent, or (b) whether or not debt service is to be paid from a revenue stream transferred by the state to another party that is responsible for making such payments.

6. "State funded debt" shall mean the combined total of all state debt and all state backed debt, except short term debt incurred in accordance

with section nine of article seven of the constitution, emergency debt incurred in accordance with section ten of article seven of the constitution, and refunding debt incurred in accordance with section thirteen of article seven of the constitution.

7. "State debt" shall mean all bonds and bond anticipation notes issued by the state comptroller pursuant to article five of this chapter.

8. "Total personal income of the state" shall mean the most recently published estimated dollar amount determined as total personal income of the state by the United States department of commerce or any successor agency for the four most recent successive calendar quarters for which information is available prior to October thirty-first of each year. Subsequent revisions of the published estimated dollar amount for such calendar quarters shall not affect the validity of the determination made by the board for any fiscal year.

§ 67-b. Use of surplus moneys to reduce outstanding state funded debt. At the close of each fiscal year, a portion of any cash surplus remaining in the general fund after the transfer pursuant to section ninety-two of this chapter shall be transferred to the debt reduction reserve fund established by section ninety-seven-rrr of this chapter, as added by section thirty-six of part B of chapter fifty-seven of the laws of nineteen hundred ninety-eight. The portion to be transferred shall be equal to the projected ratio of total debt service disbursements for the fiscal year to total governmental funds disbursements for state agency operations for the fiscal year.

§ 67-c. New York state debt management board; creation; procedure. 1. The New York state debt management board is hereby established to have and exercise the powers, duties and prerogatives provided by the provisions of this article and any other provision of law.

2. The membership of the board shall consist of three persons, including the governor, the comptroller and a third person who shall be jointly appointed by the governor and the comptroller. The term of office of the members of the board shall be the same as the terms of office of the governor and the comptroller. If the third member of the board resigns, becomes incapacitated, is jointly removed by the governor and the comptroller or is otherwise unable to serve, the governor and the comptroller shall jointly appoint a successor to serve the remainder of the unexpired term. The governor shall be the chairperson of the board. The board shall act by majority of all of the members of the board, except that changing the debt affordability level previously established by the board shall require unanimous approval by all the members of the board. Any action by the board shall be evidenced by a certification thereof signed by a majority of all the members, except that all members shall sign a certification of any action requiring unanimous approval. Each member of the board shall be entitled to designate a representative to attend meetings of the board in his or her place and to vote or otherwise act on his or her behalf in his or her absence. Notice of such designation shall be furnished in writing to the board by the designating member. A representative shall serve at the pleasure of the designating member during the member's term of office. A representative shall not be authorized to delegate any of his or her duties or powers to any other person.

3. The third member jointly appointed by the governor and the comptroller shall be a financial expert with experience in public finance, economics, academics or government.

4. All the members of the board and their representatives shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their official duties pursuant to this section or any other provision of law.

5. The board shall meet semi-annually or more frequently at the call of the chairperson. Meetings of the board shall be subject to the open meetings law established by article seven of the public officers law.

§ 67-d. Powers and duties of the board. 1. The board shall have the power and the duty to (a) annually determine the total debt limit of the state by calculating the dollar amount equivalent to five percent of the total personal income of the state, as defined in section sixty-seven-a of this article, and (b) annually prescribe a debt affordability level, which on and after April first, two thousand twenty-six shall be no higher than the total debt limit of the state.

2. On or before October thirty-first of each year, the board shall determine the total debt limit of the state for the next fiscal year, and report the limit to the temporary president of the senate, the speaker of the assembly, the chairperson and ranking minority member of the senate finance committee, and the chairperson and ranking minority member of the assembly ways and means committee. On or before the same date, the board shall issue a public announcement of such limit.

3. On or before October thirty-first of each year, the board shall prescribe the debt affordability level of the state for the next fiscal year, and report the level to the temporary president of the senate, the speaker of the assembly, the chairperson and ranking minority member of the senate finance committee, and the chairperson and ranking minority member of the assembly ways and means committee. On or before the same date, the board shall issue a public announcement of such level. Within the limitation established by the total debt limit of the state, the debt affordability level of the state shall be based upon the board's evaluation of the total amount of additional debt that may be incurred and the total debt service obligations and related payments that may be undertaken by the state without overburdening present or future generations, taking into account the current and expected revenues and expenses of the state, the current and expected trends affecting the economy of the state, and such other factors as the board deems relevant. In addition to the debt affordability level of the state for the next fiscal year, the board's report to the legislature and announcement to the public shall include the board's forecast of the debt affordability levels expected for the two succeeding fiscal years. Following the board's establishment of a debt affordability level of the state for a fiscal year, there shall be no change in such level (other than a debt affordability level forecast for a fiscal year after the next fiscal year) except with the unanimous approval of the members of the board.

4. The board shall have the power and it shall be its duty to make recommendations to the governor and the legislature of policies to govern the issuance of all state funded debt and other capital financing matters.

5. The board shall adopt policy standards relating to the issuance of all state funded debt and for capital financing. Such standards shall require the unanimous approval of all three members of the board, and shall cover, among other items, the following:

(a) structures for state funded debt, such as rate of amortization of principal, the use of premiums and capitalization of interest on state funded debt;

(b) criteria for refunding outstanding state funded debt including, but not limited to, such matters as extension of the term of outstanding debt, present value savings and distribution of actual savings;

(c) the use of credit enhancements, derivative instruments and variable or fixed rate debt obligations with respect to state funded debt;

(d) goals for the proportion of state capital spending to be financed with debt and the proportion to be financed with current appropriations;

(e) the method of sale, such as competitive or negotiated, of state funded debt obligations;

(f) criteria to be used in selecting state funded debt obligations to be retired or defeased by the use of the portion of any cash surplus, determined pursuant to section sixty-seven-b of this article, that shall be dedicated to the exclusive purpose of reducing the aggregate amount of outstanding state funded debt obligations;

(g) the definition of non-recurring revenues which shall be used for the funding of capital projects which have been authorized by law to be financed through the issuance of state funded debt or for the purpose of retiring or defeasing bonds or notes previously issued;

(h) such other policy matters relating to the issuance of state funded debt as the board may determine to be appropriate; and

(i) policy standards to be followed by state authorities, as defined in section two of the public authorities law, in relation to the issuance by such public authorities of debt obligations other than conduit debt obligations. In the discretion of the comptroller, such policy standards may be applied by the comptroller in the exercise of his or her constitutional authority to supervise the accounts of public authorities, as defined in section two of the public authorities law, and political subdivisions.

The board shall annually review the policy standards and adopt such changes or additions as it deems advisable on or before the anniversary date of its original standards.

§ 67-e. Comptroller's duties with respect to board. The comptroller shall collect and analyze data with respect to outstanding state funded debt and, at least annually, on or before the one hundred fiftieth day following the end of the state fiscal year, report to the board, the governor, the temporary president and the minority leader of the senate, and the speaker and minority leader of the assembly on the condition of state funded debt. Such report shall include, but not be limited to, the amount of state funded debt outstanding, the different issuers and categories of such debt, and any differences in credit ratings among categories and issues.

§ 67-f. Limitations on state funded debt and state debt service payments. 1. No additional state funded debt shall be incurred after April first, two thousand twenty-six if the total principal amount of such additional debt, together with the total principal amount of state funded debt already outstanding and the total principal amount of state funded debt already authorized but not yet incurred, is equal to or greater than the total debt limit of the state as determined by the board pursuant to section sixty-seven-d of this article.

2. With the exception of short term debt incurred in accordance with section nine of article seven of the constitution, emergency debt incurred in accordance with section ten of article seven of the constitution, and refunding debt, no state funded debt shall be incurred except to finance a capital purpose.

3. (a) All debt subject to the provisions of this section (i) shall, except for refunding debt, be incurred only for a capital purpose

authorized by law, and (ii) shall, if incurred on or after the first day of the first fiscal year beginning at least one year after the effective date of an amendment to section eleven of article seven of the constitution, be in the form of obligations issued by the comptroller.

(b) On and after April first, two thousand twenty-one, no debt obligation subject to the provisions of this section shall be issued unless the comptroller determines that such issuance is within the debt affordability level for that fiscal year established by the debt management board pursuant to section sixty-seven-d of this article. On or after April first, two thousand twenty-six, no such debt obligation shall be issued unless the comptroller determines that such issuance is within (i) the limit on state debt and (ii) the debt affordability level established by the board pursuant to section sixty-seven-d of this article.

4. No state funded debt shall be incurred in the form of an obligation with a final maturity exceeding the probable life of the capital project financed by such debt, as specified in section sixty-one of this chapter. Notwithstanding any other provision of law to the contrary, no state funded debt shall be incurred in the form of an obligation with a final maturity of more than thirty years.

5. During each fiscal year beginning on or after the effective date of this section, up to and including any fiscal year ending in two thousand twenty-five no new state funded debt shall be incurred in an aggregate principal amount exceeding ninety-five percent of the aggregate principal amount of new state funded debt incurred in the preceding fiscal year.

6. No state funded debt outstanding on the effective date of this subdivision shall be refunded unless (a) such refunding is conducted in all respects as if section thirteen of article seven of the constitution applied, and (b) any such refunding obligations issued on or after the first day of the first fiscal year beginning at least one year after the effective date of an amendment to section eleven of article seven of the constitution imposing a limit on the total amount of state debt, are issued by the comptroller. Such outstanding debt obligations and the debt service expenses, direct or indirect, required for such obligations shall be included in the determination of the debt limit and the debt affordability level pursuant to section sixty-seven-d of this article.

7. Debt obligations issued to refund outstanding state funded debt, regardless of whether such outstanding debt was incurred prior to the effective date of this subdivision, shall not be counted for the purposes of the debt limit and the debt affordability level determined pursuant to section sixty-seven-d of this article if such refunding is conducted in all respects as if section thirteen of article seven of the constitution applied. Debt service expenses on debt that has been refunded in accordance with section thirteen of article seven of the constitution shall be excluded for the debt affordability level to the extent that such debt service expenses are to be paid from an escrow fund established with proceeds of the refunding debt, but debt service expenses on the refunding debt shall be included except to the extent that such debt service expenses are to be paid from such an escrow fund. For the purposes of this subdivision and subdivisions six and eight of this section, any refunding debt that does not extend beyond the final maturity of the debt being refunded shall be deemed to be in compliance with the provisions of subdivision six of section thirteen of article seven of the constitution made applicable by this subdivision if there is an actual debt service savings in every year to maturity as a result of the issuance of the refunding debt.

8. After the effective date of this section the state shall not, except as specifically authorized by a provision of the constitution other than section eleven of article seven of the constitution, agree to make payments, directly or indirectly, whether or not subject to appropriation, that are to be available to pay debt service on any debt incurred by a municipality, individual, public authority or other public or private corporation or any other entity, for any purpose, if such payments are expected to be used to pay debt service only if other sources available for the payment of debt service are inadequate. Outstanding debt that would be prohibited by this subdivision if such debt had been incurred after the effective date of this subdivision may be refunded by the entity that incurred the outstanding debt provided that all provisions of subdivisions six and seven of this section are complied with except the requirement that such refunding debt obligations be issued by the comptroller, and refunding debt service expenses shall only be included in debt affordability determinations if debt service expenses on the debt being refunded would have been included.

§ 2. Subdivision 2 of section 68-a of the state finance law, as amended by section 43 of part HH of chapter 57 of the laws of 2013, is amended to read as follows:

2. "Authorized purpose" for purposes of this article and section ninety-two-z of this chapter shall mean any [~~purposes~~] purpose for which [~~state-supported~~] state funded debt, as defined by section sixty-seven-a of this chapter, may be or has been issued except debt for which the state is constitutionally obligated thereunder to pay debt service and related expenses.

§ 3. Subdivision 6 of section 68-c of the state finance law, as added by section 2 of part I of chapter 383 of the laws of 2001, is amended and a new subdivision 7 is added to read as follows:

6. Any resolution or other agreement authorizing revenue bonds under this article shall reserve the right of the state, upon amendment of section eleven of article seven of the New York state constitution allowing the issuance or assumption of bonds, notes or other obligations secured by revenues, which may include the revenues securing revenue bonds of authorized issuers (a) to assume, in whole or in part, revenue bonds of the authorized issuers, (b) to extinguish the existing lien of such resolution, or other agreement and (c) to substitute security for the revenue bonds of the authorized issuers, in each case only so long as such assumption, extinguishment or substitution is done in accordance with such resolution or other agreement and such constitutional amendment.

7. On and after the first day of the first fiscal year beginning at least one year after the effective date of an amendment of section eleven of article seven of the constitution imposing a limit on the total amount of state debt, no revenue bonds shall be issued.

§ 4. Section 97-rrr of the state finance law, as amended by section 45 of part H of chapter 56 of the laws of 2000, is amended to read as follows:

§ 97-rrr. Debt reduction reserve fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of taxation and finance a fund to be known as the debt reduction reserve fund. [~~Such fund shall be established as a capital projects fund.~~]

2. Such fund shall consist of all monies credited or transferred thereto from the general fund or from any other fund or sources pursuant to law.

3. The monies in such fund, following appropriation by the legislature and allocation by the director of the budget, shall be available [~~for the following purposes:~~

~~(a) for the payment of principal, interest, and related expenses on general obligation bonds, lease purchase payments, or special contractual obligation payments, or~~] only for the [~~purposes~~] purpose of retiring or defeasing bonds or notes previously issued, including any accrued interest thereon, for any [~~state-supported bonding program or programs, and;~~

~~(b) for the funding of capital projects, equipment acquisitions, or similar expenses which have been authorized by law to be financed through the issuance of bonds, notes, or other obligations~~] state funded debt.

§ 5. Section 24 of the state finance law is amended by adding a new subdivision 6 to read as follows:

6. The budget bills shall include an appropriation of the available balance from the debt reduction reserve fund created by section ninety-seven-rrr of this chapter, as added by section thirty-six of part B of chapter fifty-seven of the laws of nineteen hundred ninety-eight, to be used exclusively for the purpose of retiring or defeasing state funded debt obligations in accordance with the criteria established by the New York state debt management board.

§ 6. Subdivision 1 of section 51 of the public authorities law, as added by chapter 838 of the laws of 1983, paragraph k as added by chapter 506 of the laws of 1995, paragraph l as added by chapter 468 of the laws of 2004, paragraph m as added by section 10 of part E of chapter 494 of the laws of 2009 and paragraph n as added by chapter 533 of the laws of 2010, is amended to read as follows:

1. [~~The~~] Subject to (a) the comptroller's constitutional authority to supervise the accounts of public authorities, (b) the comptroller's statutory authority to approve the terms and conditions of debt obligations issued by public authorities, and (c) the policy standards established by the New York state debt management board pursuant to section sixty-seven-d of the state finance law in relation to public authority debt, the New York state public authorities control board shall have the power and it shall be its duty to receive applications for approval of the financing and construction of any project proposed by any [~~of the following state public benefit corporations:~~

~~a. New York state environmental facilities corporation~~

~~b. New York state housing finance agency~~

~~c. New York state medical care facilities finance agency~~

~~d. Dormitory authority~~

~~e. New York state urban development corporation~~

~~f. Job development authority~~

~~g. Battery park city authority~~

~~h. New York state project finance agency~~

~~i. State of New York mortgage agency~~

~~j. New York state energy research and development authority~~

~~k. Long Island Power Authority~~

~~l. Albany Convention Center Authority~~

~~m. State of New York Municipal Bond Bank Agency for bonds issued pursuant to section two thousand four hundred thirty-six-b of this chapter~~

~~n. North Country Power Authority~~] Class A or Class B public authority, as defined in section two of this chapter.

Any application made concerning a project shall include the terms, conditions and dates of the repayment of state appropriations authorized by law pursuant to a repayment agreement**, and a current listing of all outstanding debt and debt service obligations of the applicant**. Any subsidiary of, or corporation with the same members or directors as, a public benefit corporation subject to the provisions of this section shall also be subject to the provisions of this section. All applications and submissions to the board required to be made by a subsidiary shall be made on behalf of such subsidiary by the public benefit corporation which created the subsidiary. No public benefit corporation subject to the provisions of this section shall make any commitment, enter into any agreement or incur any indebtedness for the purpose of acquiring, constructing, or financing any project unless prior approval has been received from the board by such public benefit corporation as provided herein.

§ 7. Section 51 of the public authorities law is amended by adding a new subdivision 6 to read as follows:

6. Not later than ninety days after the end of each fiscal year, the board shall submit to the governor, the comptroller, the temporary president and the minority leader of the senate, and the speaker and the minority leader of the assembly an annual report detailing: (a) the aggregate amount of debt approved by the board during such fiscal year;

(b) a list of the individual projects approved by the board for each public authority during such fiscal year; and

(c) the total amount of new debt obligations the board has approved during such fiscal year for issuance by each public authority.

The board shall publish such report by posting such report on the board's internet website. Each such report posted on the board's internet website shall be maintained on such website for at least twelve months or until the next such report is posted on such website, whichever is later. The board shall issue a news release announcing such report to newspapers of general circulation and radio and television news bureaus within the state.

§ 8. Subdivision 2 of section 365 of the public authorities law, as separately amended by sections 349 and 381 of chapter 190 of the laws of 1990, is amended to read as follows:

2. The notes and bonds shall be authorized by resolution of the board, shall bear such date or dates and mature at such time or times, in the case of notes and any renewals thereof within five years after their respective dates and in the case of bonds not exceeding forty years from their respective dates, as such resolution or resolutions may provide. The notes and bonds shall bear interest at such rate or rates, be in such denominations, 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 of redemption as such resolution or resolutions may provide. Bonds and notes shall be sold by the authority, at public or private sale, at such price or prices as the authority may determine. Bonds and notes of the authority shall not be sold by the authority at private sale unless such sale and the terms thereof have been approved in writing by the comptroller, where such sale is not to the comptroller, or by the director of the budget, where such sale is to the comptroller. [~~**Bonds and notes sold at public sale shall be sold by the comptroller, as agent of the authority, in such manner as the authority, with the approval of the comptroller, shall determine.**~~]

§ 9. This act shall take effect immediately; provided, however, that paragraph (a) of subdivision 3 and subdivision 6 of section 67-f of the state finance law, as added by section one of this act, and section three of this act, shall take effect on the same date as a concurrent resolution of the Senate and Assembly entitled "proposing amendments to article 7 of the constitution, in relation to the authorization of debt in times of public emergency, a limit on the total amount of state debt, the establishment of a debt management board and refunding of state debts", takes effect.