

# STATE OF NEW YORK

4197--A

2019-2020 Regular Sessions

## IN SENATE

March 4, 2019

Introduced by Sen. JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the local finance law, in relation to the sale of bonds and notes of the city of New York, the issuance of bonds or notes with variable rates of interest, interest rate exchange agreements of the city of New York, the refunding of bonds, and the down payment for projects financed by bonds; to amend the New York state financial emergency act for the city of New York, in relation to a pledge and agreement of the state; and to amend chapter 142 of the laws of 2004, amending the local finance law relating to interest rate exchange agreements of the city of New York and refunding bonds of such city, in relation to the effectiveness thereof

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

1 Section 1. The opening paragraph of paragraph (a) of section 54.10 of  
2 the local finance law, as amended by chapter 91 of the laws of 2018, is  
3 amended to read as follows:

4 To facilitate the marketing of any issue of bonds or notes of the city  
5 of New York issued on or before June thirtieth, two thousand [~~nineteen~~]  
6 twenty-two, the mayor and comptroller of such city may, subject to the  
7 approval of the state comptroller and the limitations on private sales  
8 of bonds and notes, respectively, provided by law:

9 § 2. The closing paragraph of paragraph a of section 54.90 of the  
10 local finance law, as amended by chapter 91 of the laws of 2018, is  
11 amended to read as follows:

12 Notwithstanding the foregoing, whenever in the judgment of the finance  
13 board of the city of New York the interest of such city would be served  
14 thereby, the city of New York may without further approval issue bonds  
15 or notes, on or before July fifteenth, two thousand [~~nineteen~~] twenty-

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

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1 two, with interest rates that vary in accordance with a formula or  
2 procedure and are subject to a maximum rate of interest set forth or  
3 referred to in the bonds or notes and may provide the holders thereof  
4 with such rights to require the city or other persons to purchase such  
5 bonds or notes or renewals thereof from the proceeds of the resale ther-  
6 eof or otherwise from time to time prior to the final maturity of such  
7 bonds or notes as the finance board of the city of New York may deter-  
8 mine and the city may resell, at any time prior to final maturity, any  
9 such bonds or notes acquired as a result of the exercise of such rights;  
10 provided, however, that at no time shall the total principal amount of  
11 bonds and notes issued by the city of New York pursuant to this para-  
12 graph (other than bonds and notes (1) bearing interest at rates and for  
13 periods of time that are specified without reference to future events or  
14 contingencies, or (2) described in section 136.00 of this article)  
15 exceed twenty-five percent of the limit prescribed by section 104.00 of  
16 this article.

17 § 3. The opening paragraph of subdivision 1 of paragraph d of section  
18 54.90 of the local finance law, as amended by chapter 91 of the laws of  
19 2018, is amended to read as follows:

20 On or before July fifteenth, two thousand [~~nineteen~~] twenty-two the  
21 mayor and comptroller of the city of New York may:

22 § 4. The opening paragraph of paragraph a of section 57.00 of the  
23 local finance law, as amended by chapter 91 of the laws of 2018, is  
24 amended to read as follows:

25 Bonds shall be sold only at public sale and in accordance with the  
26 procedure set forth in this section and sections 58.00 and 59.00 of this  
27 title, except as otherwise provided in this paragraph. Bonds may be sold  
28 at private sale to the United States government or any agency or instru-  
29 mentality thereof, the state of New York municipal bond bank agency, to  
30 any sinking fund or pension fund of the municipality, school district or  
31 district corporation selling such bonds, or, in the case of sales by the  
32 city of New York prior to July first, two thousand [~~nineteen~~]  
33 twenty-two, also to the municipal assistance corporation for the city of  
34 New York or to any other purchaser with the consent of the mayor and the  
35 comptroller of such city and approval of the state comptroller, or, in  
36 the case of sales by the county of Nassau prior to December thirty-  
37 first, two thousand seven, also to the Nassau county interim finance  
38 authority with the approval of the state comptroller, or, in the case of  
39 sales by the city of Buffalo prior to June thirtieth, two thousand thir-  
40 ty-seven, also to the Buffalo fiscal stability authority with the  
41 approval of the state comptroller, or, in the case of bonds or other  
42 obligations of a municipality issued for the construction of any sewage  
43 treatment works, sewage collecting system, storm water collecting  
44 system, water management facility, air pollution control facility or  
45 solid waste disposal facility, also to the New York state environmental  
46 facilities corporation, or, in the case of bonds or other obligations of  
47 a school district or a city acting on behalf of a city school district  
48 in a city having a population in excess of one hundred twenty-five thou-  
49 sand but less than one million inhabitants according to the latest  
50 federal census, issued to finance or refinance the cost of school  
51 district capital facilities or school district capital equipment, as  
52 defined in section sixteen hundred seventy-six of the public authorities  
53 law, also to the dormitory authority of the state of New York. Bonds of  
54 a river improvement or drainage district established by or under the  
55 supervision of the department of environmental conservation may be sold  
56 at private sale to the state of New York as investments for any funds of

1 the state which by law may be invested, provided, however, that the rate  
2 of interest on any such bonds so sold shall be approved by the water  
3 power and control commission and the state comptroller. Bonds may also  
4 be sold at private sale as provided in section 63.00 of this title. No  
5 bonds shall be sold on option or on a deferred payment plan, except that  
6 options to purchase, effective for a period not exceeding one year, may  
7 be given:

8 § 5. Subdivision 3 of paragraph g of section 90.00 of the local  
9 finance law, as amended by chapter 91 of the laws of 2018, is amended to  
10 read as follows:

11 3. Outstanding bonds may, pursuant to a power to recall and redeem or  
12 with the consent of the holders thereof, be exchanged for refunding  
13 bonds (i) if the refunding bonds are to bear interest at a rate equal to  
14 or lower than that borne by the bonds to be refunded or (ii) if, in the  
15 case of the city of New York prior to July first, two thousand [~~nine-~~  
16 ~~teen~~] twenty-two, the annual payment required for principal and interest  
17 on the refunding bond is less than the annual payment required for prin-  
18 cipal and interest on the bond to be refunded, in each case such annual  
19 payments to be determined by dividing the total principal and interest  
20 payments due over the remaining life of the bond by the number of years  
21 to maturity of the bond or (iii) if the bonds to be refunded were issued  
22 by the city of New York after June thirtieth, nineteen hundred seventy-  
23 eight and prior to July first, two thousand [~~nineteen~~] twenty-two and  
24 contain covenants referring to the existence of the New York state  
25 financial control board for the city of New York or any other covenants  
26 relating to matters other than the prompt payment of principal and  
27 interest on the obligations when due and the refunding bond omits or  
28 modifies any such covenant.

29 § 6. Subdivision 8 of paragraph d of section 107.00 of the local  
30 finance law, as amended by chapter 91 of the laws of 2018, is amended to  
31 read as follows:

32 8. Notwithstanding any other provision of law, the financing by the  
33 city of New York prior to July first, two thousand [~~nineteen~~] twenty-two  
34 of any object or purpose which has a period of probable usefulness  
35 determined by law by the issuance of any bonds or notes, including (i)  
36 the issuance of bonds or notes to obtain reimbursement for funds hereto-  
37 fore advanced for the object or purpose for which the bonds or notes are  
38 being issued, (ii) the issuance of bonds or notes to redeem notes previ-  
39 ously issued for the object or purpose for which the bonds or notes are  
40 being issued or (iii) the issuance of bonds to refund bonds previously  
41 issued for the object or purpose for which bonds are being issued.

42 § 7. Subdivision 1 of section 10-a of section 2 of chapter 868 of the  
43 laws of 1975, constituting the New York state financial emergency act  
44 for the city of New York, as amended by chapter 91 of the laws of 2018,  
45 is amended to read as follows:

46 1. In the event that after the date on which the provisions of this  
47 act become operative, any notes or bonds are issued by the city prior to  
48 July 1, [~~2019~~] 2022, or any bonds are issued by a state financing agen-  
49 cy, the state of New York hereby authorizes the city and authorizes and  
50 requires such state financing agency to include a pledge and agreement  
51 of the state of New York in any agreement made by the city or such state  
52 financing agency with holders or guarantors of such notes or bonds that  
53 the state will not take any action which will (a) substantially impair  
54 the authority of the board during a control period, as defined in subdi-  
55 vision twelve of section two of this act as in effect on the date such  
56 notes or bonds are issued (i) to approve, disapprove, or modify any

1 financial plan or financial plan modification, including the revenue  
2 projections (or any item thereof) contained therein, subject to the  
3 standards set forth in paragraphs a, c, d, e and f of subdivision one of  
4 section eight of this act as in effect on the date such notes or bonds  
5 are issued and paragraph b of such subdivision as in effect from time to  
6 time, (ii) to disapprove a contract of the city or a covered organiza-  
7 tion if the performance of such contract would be inconsistent with the  
8 financial plan or to approve or disapprove proposed short-term or long-  
9 term borrowing of the city or a covered organization or any agreement or  
10 other arrangement referred to in subdivision four of section seven of  
11 this act, or (iii) to establish and adopt procedures with respect to the  
12 deposit in and disbursement from the board fund of city revenues; (b)  
13 substantially impair the authority of the board to review financial  
14 plans, financial plan modifications, contracts of the city or the  
15 covered organizations and proposed short-term or long-term borrowings of  
16 the city and the covered organizations; (c) substantially impair the  
17 independent maintenance of a separate fund for the payment of debt  
18 service on bonds and notes of the city; (d) alter the composition of the  
19 board so that the majority of the voting members of the board are not  
20 officials of the state of New York elected in a state-wide election or  
21 appointees of the governor; (e) terminate the existence of the board  
22 prior to the time to be determined in accordance with section thirteen  
23 of this act as in effect on the date such notes or bonds are issued; (f)  
24 substantially modify the requirement that the city's financial state-  
25 ments be audited by a nationally recognized independent certified public  
26 accounting firm or consortium of firms and that a report on such audit  
27 be furnished to the board; or (g) alter the definition of a control  
28 period set forth in subdivision twelve of section two of this act, as in  
29 effect on the date such notes or bonds are issued, or substantially  
30 alter the authority of the board, as set forth in said subdivision to  
31 reimpose or terminate a control period; provided, however, that the  
32 foregoing pledge and agreement shall be of no further force and effect  
33 if at any time (i) there is on deposit in a separate trust account with  
34 a bank, trust company or other fiduciary sufficient moneys or direct  
35 obligations of the United States or obligations guaranteed by the United  
36 States, the principal of and/or interest on which will provide moneys to  
37 pay punctually when due at maturity or prior to maturity by redemption,  
38 in accordance with their terms, all principal of and interest on all  
39 outstanding notes and bonds of the city or such state financing agency  
40 containing this pledge and agreement and irrevocable instructions from  
41 the city or such state financing agency to such bank, trust company or  
42 other fiduciary for such payment of such principal and interest with  
43 such moneys shall have been given, or (ii) such notes and bonds, togeth-  
44 er with interest thereon, have been paid in full at maturity or have  
45 otherwise been refunded, redeemed, defeased, or discharged; and provided  
46 further that the foregoing pledge and agreement shall be of full force  
47 and effect upon its inclusion in any agreement made by the city or state  
48 financing agency with holders or guarantors of such notes or bonds.

49 Upon payment for such obligations issued pursuant to this act by the  
50 original and all subsequent holders inclusion of the foregoing covenant  
51 shall be deemed conclusive evidence of valuable consideration received  
52 by the state and city for such covenant and of reliance upon such pledge  
53 and agreement by any such holder. The state hereby grants any such bene-  
54 fited holder the right to sue the state in a court of competent juris-  
55 diction and enforce this covenant and agreement and waives all rights of  
56 defense based on sovereign immunity in such an action or suit.

1 § 8. Section 5 of chapter 142 of the laws of 2004, amending the local  
2 finance law relating to interest rate exchange agreements of the city of  
3 New York and refunding bonds of such city, as amended by chapter 91 of  
4 the laws of 2018, is amended to read as follows:

5 § 5. This act shall take effect immediately, provided, that section  
6 three of this act shall expire and be deemed repealed July 15, [~~2019~~]  
7 2022.

8 § 9. Separability. If any clause, sentence, paragraph, section or part  
9 of this act shall be adjudged by any court of competent jurisdiction to  
10 be invalid, such judgment shall not affect, impair or invalidate the  
11 remainder thereof, but shall be confined in its operation to the clause,  
12 sentence, paragraph, section or part thereof directly involved in the  
13 controversy in which such judgment shall have been rendered.

14 § 10. This act shall take effect immediately.