STATE OF NEW YORK

8428

IN SENATE

May 28, 2020

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

AN ACT to amend a chapter of the laws of 2020 amending the local finance law relating to bond anticipation notes issued in calendar years 2015 through 2021, as proposed in legislative bills numbers S. 8417 and A. 10492, in relation to expenditures and temporary transfer of reserve funds for expenses related to state disaster emergency declared pursuant to executive order 202 of 2020 and authorizing the extension of repayment of inter-fund advances made for expenses related to state disaster emergency declared pursuant to executive order 202 of 2020 (Part A); to amend the public service law, in relation to issuing a moratorium on utility termination of services during periods of pandemics and/or state of emergencies; and to amend a chapter of the laws of 2020 amending the public service law, relating to issuing a moratorium on utility termination of services during periods of pandemics and/or state of emergencies, as proposed in legislative bills numbers S.8113-A and A.10521, in relation to the effectiveness thereof (Part B); to amend the banking law, in relation to the forbearance of residential mortgage payments (Part C); and to amend the criminal procedure law, in relation to hearings conducted on a felony complaint during a state disaster emergency (Part D)

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

Section 1. This act enacts into law legislation providing for important provisions relating to a state disaster emergency. Each component is wholly contained within a Part identified as Parts A through D. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

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

LBD16563-02-0

PART A

Section 1. The title of a chapter of the laws of 2020 amending the local finance law relating to bond anticipation notes issued in calendar years 2015 through 2021, as proposed in legislative bills number S. 8417 and A. 10492, is amended to read as follows:

to amend the local finance law, in relation to bond anticipation notes issued in calendar years 2015 through 2021; to authorize the expenditure and temporary transfer of reserve funds for expenses related to [~~COVID-19~~] **the state disaster emergency declared pursuant to executive order 202 of 2020**; and to authorize the extension of repayment of inter-fund advances made for expenses related to [~~COVID-19~~] **the state disaster emergency declared pursuant to executive order 202 of 2020**

§ 2. Section 2 of a chapter of the laws of 2020 amending the local finance law relating to bond anticipation notes issued in calendar years 2015 through 2021, as proposed in legislative bills numbers S. 8417 and A. 10492, is amended to read as follows:

§ 2. Notwithstanding any provision of sections 6-c or 6-g of the general municipal law or section 3651 of the education law to the contrary, the governing board of a town, village, county, city, water improvement district, sewer improvement district, fire district or school district, by resolution which shall not be subject to referendum requirements, may authorize expenditures from capital reserve funds for capital costs attributable to the [~~COVID-19 pandemic~~] **state disaster emergency declared pursuant to executive order 202 of 2020**.

§ 3. Section 3 of a chapter of the laws of 2020 amending the local finance law relating to bond anticipation notes issued in calendar years 2015 through 2021, as proposed in legislative bills numbers S. 8417 and A. 10492, is amended to read as follows:

§ 3. Notwithstanding any provision of the general municipal law, the town law or the education law to the contrary, the governing board of a town, village, county, city, water improvement district, sewer improvement district, fire district or school district, by resolution which shall not be subject to referendum requirements, if any, may authorize the temporary transfer of moneys from reserve funds to pay for operating costs **attributable to the state disaster emergency declared pursuant to executive order 202 of 2020** or other costs attributable to the [~~COVID-19 pandemic~~] **state disaster emergency declared pursuant to executive order 202 of 2020**, provided, that the reserve fund from which the funds were temporarily transferred shall be reimbursed from the fund to which the transfer was made over a period of not more than five fiscal years, starting with the fiscal year following the transfer. At least twenty percent of the moneys temporarily transferred shall be reimbursed each fiscal year. Such reimbursement shall include an additional amount reasonably estimated to be the amount that would have been earned on the investment of the transferred moneys had they been retained in the capital reserve fund.

§ 4. Section 4 of a chapter of the laws of 2020 amending the local finance law relating to bond anticipation notes issued in calendar years 2015 through 2021, as proposed in legislative bills numbers S. 8417 and A. 10492, is amended to read as follows:

§ 4. Notwithstanding the provisions of subdivision 3 of section 9-a of the general municipal law, for inter-fund advances made pursuant to such subdivision for costs attributable to the [~~COVID-19 pandemic~~] **state disaster emergency declared pursuant to executive order 202 of 2020**, repayment of moneys to the fund from which they were advanced shall be

made by close of the fiscal year next succeeding the fiscal year in which such advance was made.

§ 5. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2020 amending the local finance law relating to bond anticipation notes issued in calendar years 2015 through 2021, as proposed in legislative bills numbers S. 8417 and A. 10492, takes effect.

PART B

Section 1. Subdivisions 9, 10 and 12 of section 91 of the public service law, as added by a chapter of the laws of 2020 amending the public service law, relating to issuing a moratorium on utility termination of services during periods of pandemics and/or state of emergencies, as proposed in legislative bills numbers S.8113-A and A.10521, are amended to read as follows:

9. No telephone corporation shall terminate or disconnect a residential service customer for the non-payment of an overdue charge for the duration of the state disaster emergency declared pursuant to executive order two hundred two of two thousand twenty (hereinafter "the COVID-19 state of emergency"). Telephone corporations shall have a duty to restore service, to the extent not already required under this chapter, [~~to~~] **at the request of** any residential customer within forty-eight hours if such service has been terminated during the pendency of the COVID-19 state of emergency **and disconnection of such service was due to non-payment of an overdue charge**.

10. [~~After~~] **For a period of one hundred eighty days after** the COVID-19 state of emergency is lifted or expires, no telephone corporation shall terminate or disconnect the service of a residential customer account because of defaulted deferred payment agreements or arrears **then** owed to the telephone corporation when such customer has experienced a change in financial circumstances due to the COVID-19 state of emergency, as defined by the department. The telephone corporation shall provide such residential customer with the right to enter into, or restructure, a deferred payment agreement without the requirement of a down payment, late fees, or penalties[~~, as such is provided for in article two of this chapter~~].

12. Implementation of the provisions of this section shall not prohibit a telephone corporation from recovering lost or deferred revenues after the lifting or expiration of the COVID-19 state of emergency, pursuant to such means for recovery as are provided for in this chapter, and by means not inconsistent with any of the provisions of this article**. Nothing in this section shall prohibit a telephone corporation from disconnecting service at the request of a customer**. Nothing in this section shall prohibit a telephone corporation from disconnecting service when it is necessary to protect the health and safety of customers and the public.

§ 2. Section 5 of a chapter of the laws of 2020 amending the public service law, relating to issuing a moratorium on utility termination of services during periods of pandemics and/or state of emergencies, as proposed in legislative bills numbers S.8113-A and A.10521, is amended to read as follows:

§ 5. This act shall take effect immediately **and shall expire March 31, 2021 when upon such date the provisions of this act shall be deemed repealed**.

§ 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2020 amending the public service law, relating to issuing a moratorium on utility termination of services during periods of pandemics and/or state of emergencies, as proposed in legislative bills numbers S.8113-A and A.10521, takes effect; provided however, that the amendments to subdivisions 9, 10 and 12 of section 91 of the public service law made by section one of this act shall not affect the repeal of such subdivisions and shall be deemed to be repealed therewith.

PART C

Section 1. Section 9-x of the banking law, as added by a chapter of the laws of 2020, amending the banking law relating to the forbearance of residential mortgage payments, as proposed in legislative bills numbers S. 8243-C and A. 10351-B, is amended to read as follows:

§ 9-x. Mortgage forbearance. 1. As used in this section, the following terms shall have the following meanings:

(a) "Covered period" means March 7, 2020 until the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14, as extended by Executive Orders 202.28 and 202.31 and as further extended by any future Executive Order, issued in response to the COVID-19 pandemic continue to apply in the county of the qualified mortgagor's residence;

(b) "qualified mortgagor" means an individual [~~who resides in New York~~] **(i)** whose [~~principal dwelling~~] **primary residence is located in New York and** is encumbered by a home loan pursuant to paragraph (a) of subdivision six of section thirteen hundred four of the real property actions and proceedings law or whose [~~principal dwelling~~] **primary residence is located in New York and** is a co-operative unit whose shares are encumbered by any loan otherwise meeting the requirements of a home loan under paragraph (a) of subdivision six of section thirteen hundred four of the real property actions and proceedings law, from or serviced by a regulated institution; **and (ii) who demonstrates financial hardship as a result of COVID-19 during the covered period;**

(c) "regulated institution" means any New York regulated banking organization as defined in this chapter and any New York regulated mortgage servicer entity subject to supervision by the department; and

(d) "trial period plan" means an agreement whereby the mortgagor is required to make trial payments in full and on-time in order to be considered for a permanent loan modification.

2. Notwithstanding any other provision of law, New York regulated institutions shall:

(a) make applications for forbearance of any payment due on a residential mortgage of a property located in New York widely available to any qualified mortgagor who, during the covered period, is in arrears or on a trial period plan, or who has applied for loss mitigation [~~and demonstrates financial hardship during the covered period~~]; and

(b) grant such forbearance **of all monthly payments due with respect to the mortgage secured by the qualified mortgagor's primary residence in New York** for a period of **up to** one hundred eighty days to any such qualified mortgagor [~~who is in arrears or on a trial period plan, or who has applied for loss mitigation and demonstrates financial hardship~~], with

the option to extend **the forbearance of such monthly payments for up to** an additional one hundred eighty days **provided that this extension is subject to the mortgagor demonstrating continued financial hardship**. **If any qualified mortgagor has already received a forbearance pursuant to executive order 202.9 of two thousand twenty, the time of such forbearance shall be considered as part of the requirement of this section to provide a forbearance of up to one hundred eighty days, and any extension thereof pursuant to this section.**

(c) Such forbearance may be backdated to March seventh, two thousand twenty**, provided that the maximum length of the forbearance may be no longer than one hundred eighty days and any extension thereof pursuant to this section**.

3. Notwithstanding any other provision of law, any mortgage forbearance granted by a regulated institution pursuant to executive order number 202.9 of two thousand twenty, this section, or [~~any other law, rule or regulation to the~~] **3 NYCRR Part 119 to a** qualified mortgagor as a result of financial hardship [~~during the covered period~~] shall be subject to the following provisions:

(a) the mortgagor shall have the option to extend the term of the loan for the length of the period of forbearance. The regulated institution shall [~~waive interest on the principal for the term of the forbearance and waive any late fees accumulated as a result of the forbearance~~] **not charge additional interest or any late fees or penalties on the forborne payment**; or

(b) the mortgagor shall have the option to have the arrears accumulated during the forbearance period payable on a monthly basis for the remaining term of the loan without being subject to penalties or late fees incurred as a result of the forbearance; or

(c) **the mortgagor shall have the option to negotiate a loan modification or any other option that meets the changed circumstances of the qualified mortgagor; or**

(d) if [~~the mortgagor is unable to make mortgage payments due to mortgagors' demonstrated hardship and~~] the mortgagor and regulated institution cannot **reasonably** agree on a mutually acceptable loan modification, the [~~mortgagor~~] **regulated institution** shall [~~have the option~~] **offer** to defer arrears accumulated during the forbearance period as a non-interest bearing balloon [~~payment~~] **loan** payable at the maturity of the loan [~~consistent with the safety and soundness of such regulated institution~~], or at the time the loan is satisfied through a refinance or sale of the property. Any late fees accumulated as a result of the forbearance shall be waived.

[~~(d)~~] **(e)** The exercising of options provided for in paragraph (a), (b) [~~or~~]**,** (c) **or (d)** of this subdivision by a qualified mortgagor shall not be reported negatively to any credit bureau by any regulated institution.

4. Notwithstanding any other provision of law, adherence with this section shall be a condition precedent to commencing a foreclosure action stemming from missed payments which would have otherwise been subject to this section. A defendant may raise the violation of this section as a defense to a foreclosure action commenced on the defendant's property when such action is based on missed payments that would have otherwise been subject to this section.

5. Notwithstanding anything to the contrary in this section, this section shall not apply to, and does not affect any mortgage loans made, insured, **purchased** or securitized by any agency or instrumentality of the United States, any government sponsored enterprise, or a federal

home loan bank, **or a corporate governmental agency of the state constituted as a political subdivision and public benefit corporation,** or the rights and obligations of any lender, issuer, servicer or trustee of such obligations, including servicers for the Government National Mortgage Association.

6. Notwithstanding any other provision of law or of this section, the obligation to grant the forbearance relief required by this section shall be subject to the regulated institution having sufficient capital and liquidity to meet its obligations and to operate in a safe and sound manner. Any regulated institution that determines that it is not able to offer relief pursuant to this section to any qualified mortgagor must notify the department within five business days of making such determination. Any such notice filed with the department shall include information about the qualified mortgagor, the reason the regulated institution determined that it was unable to offer any relief pursuant to this section, information about the regulated institution's financial condition supporting the regulated institution's determination, and any other information required by the department. At the same time that the regulated institution provides notice to the department, it shall advise the qualified mortgagor that the application for relief was denied and provide a statement that the applicant may file a complaint with the New York state department of financial services at 1-800-342-3736 or http://www.dfs.ny.gov if the applicant believes the application was wrongly denied.

§ 2. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2020, amending the banking law relating to the forbearance of residential mortgage payments, as proposed in legislative bills numbers S. 8243-C and A. 10351-B, takes effect.

PART D

Section 1. Section 180.65 of the criminal procedure law, as added by a chapter of the laws of 2020, amending the criminal procedure law relating to conducting hearings on a felony complaint during a state disaster emergency, as proposed in legislative bills numbers S. 8414 and A. 10493, is amended to read as follows:

§ 180.65 Hearing upon felony complaint; emergency provision during disaster emergency.

During the period of the COVID-19 state disaster emergency, as declared pursuant to executive order number two hundred two of two thousand twenty and extensions thereof and article two-B of the executive law, the following additional provisions shall apply to the conduct of a hearing on a felony complaint pursuant to this article:

1. The appearance of any party and any witness at such hearing may be by electronic appearance through an independent audio-visual system, as such terms are defined in section 182.10 of this title, where the court finds **upon its own motion** after hearing from the parties and any such witness, either in person or by electronic appearance, that due to the person's circumstances and such disaster emergency a personal appearance by such party or witness would be an unreasonable hardship to such person or witness **or create an unreasonable health risk to the public, court staff or anyone else involved in the proceeding**.

2. At any such hearing on the felony complaint, the judge must be able to hear and see the image of each witness clearly [~~though~~] **through** the independent audio-visual system and such sound and visual image shall be similar to the sound and image the judge would hear and see if the

witness were present together with the judge testifying in the courtroom. Documents, photographs and the like offered at the hearing may be exchanged among the parties by electronic means. A stenographic transcription or appropriate audio recording of the proceedings shall be maintained, and the live testimony received by electronic appearance, and other electronic appearances where practicable, shall be video recorded **by the court, and a copy provided to the people and the defense**.

3. The authority for an electronic appearance pursuant to this section shall be considered sufficient means to enable the court to conduct a hearing on a felony complaint within the meaning of section 180.80 of this article.

§ 2. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2020, amending the criminal procedure law relating to conducting hearings on a felony complaint during a state disaster emergency, as proposed in legislative bills numbers S. 8414 and A. 10493, takes effect, provided, however, that the amendments made to section 180.65 of the criminal procedure law made by section one of this act shall not affect the repeal of such section and shall be deemed repealed therewith.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through D of this act shall be as specifically set forth in the last section of such Parts.