STATE OF NEW YORK

1504

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. ZEBROWSKI -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to enacting the local government fiscal indicator system act

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

Section 1. This act shall be known as the "local government fiscal indicator system act".

§ 2. The general municipal law is amended by adding a new article 4-A to read as follows:

ARTICLE 4-A

LOCAL GOVERNMENT FISCAL INDICATOR SYSTEM

Section 60. Definitions.

61. Review of financial information; request for response.

62. Level one fiscal stress.

63. Level two fiscal stress.

64. Level three fiscal stress.

65. Fiscal crisis.

66. New York state board of local government deficit financing authorization.

67. Inconsistency with other laws.

68. Notice of benchmarks and additional criteria.

69. Reports.

69-a. No duplication.

§ 60. Definitions. As used in this article:

1. "Municipality" shall mean any county, town, village, school district or city other than a city having a population of one million or more.

2. "Comptroller" shall mean the New York state comptroller.

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

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3. "Annual financial report" shall mean the report of a municipality's financial condition required to be made annually to the comptroller pursuant to section thirty of this chapter.

4. "Tentative budget" shall mean the tentative budget prepared pursuant to section three hundred fifty-four of the county law, section one hundred six of the town law or section 5-504 of the village law, the annual estimate proposed pursuant to section seventy-five of the second class cities law, or similar document prepared pursuant to general, special or local law.

5. "Benchmark" shall mean a standard or reference point based on an analysis of other municipalities of similar size and character, statewide or national trends or similar commonly accepted factors in municipal finance.

6. "Major operating fund" shall mean a municipality's general fund and any other fund that represents more than twenty per centum of that municipality's total funds.

7. "Financial control board" shall mean a public authority created by the state that has legal control over a municipality for a period of time in order to improve the financial condition. During that control period, the board shall have powers including but not limited to approval of contracts, issuance of debt, approval of financial plan and ability to conduct meetings. The board shall remain in control until certain triggers are met indicating that the financial condition of the municipality has improved.

§ 61. Review of financial information; request for response. In furtherance of the purposes of this article, the comptroller shall establish a program for the review of annual financial report data of municipalities, and such other related data and information as may be deemed relevant. The comptroller may request the submission by any municipality of additional information or data for this purpose. The comptroller shall consult with municipal officials, as appropriate, during the review process. Based upon the comptroller's review, the comptroller, in such manner as he or she deems appropriate, may make recommendations to the chief executive officer and chief fiscal officer of the municipality as to actions which may be taken by the municipality in connection with the fiscal affairs of the municipality. The chief executive officer or chief fiscal officer shall respond to the comptroller's recommendations, in such manner as the comptroller deems appropriate, by indicating actions taken or proposed to be taken or, if the chief executive officer or the chief fiscal officer indicates that no action is warranted or is to be taken or proposed, by providing an explanation.

§ 62. Level one fiscal stress. 1. Based upon the comptroller's review of annual financial report data, and other appropriate data and information pursuant to section sixty-one of this article, the comptroller may identify those municipalities that:

a. have failed to timely provide additional information or data requested by the comptroller or have failed to sufficiently respond to any recommendations made by the comptroller pursuant to section sixty-one of this article; or

b. the comptroller determines that the municipality meets one of the following criteria:

(i) the municipality, in the last completed fiscal year, had an unplanned operating deficit in a major operating fund in excess of one and one half per centum of such major operating fund's expenditures in the last completed fiscal year;

(ii) the municipality, in its last completed fiscal year, had an unappropriated or unreserved fund balance deficit in the municipality's general fund; or

(iii) the municipality, in its last completed fiscal year, had a ratio of non-recurring revenues used to fund recurring expenditures to total expenditures in excess of a benchmark determined by the comptroller and had a ratio of debt service to total revenue in excess of a benchmark determined by the comptroller.

2. For each municipality identified pursuant to subdivision one of this section, the comptroller shall notify the chief executive officer, chief fiscal officer and governing body of the affected municipality that the municipality has fallen within the criteria set forth in subdivision one of this section and of their designation of level one fiscal stress. The notification shall include details of the determination and the criteria used. Such notification shall be made in such manner as the comptroller deems appropriate. Within thirty days after receipt of such notification, the chief executive officer of the municipality shall respond to the comptroller's notification in such form as required by the comptroller, with a self-evaluation of the fiscal affairs of the municipality, addressing the matters raised in the notification. Such response shall include a corrective action plan that details specific courses of action that have been taken or will be taken to address the fiscal stress identified by the comptroller. After receipt and review of the response, the comptroller may require any local official or employee of the municipality, or his or her designee, to attend a relevant municipal training course conducted or approved by the comptroller. The chief executive officer or chief fiscal officer of the municipality may request assistance from the comptroller in reviewing the matters raised in the comptroller's notification and shall receive such assistance as may be reasonably necessary from any officer or employee of the municipality.

§ 63. Level two fiscal stress. 1. Based upon the comptroller's review of annual financial report data and other appropriate data and information pursuant to section sixty-one of this article, the comptroller may identify those municipalities that:

a. have failed to timely provide additional information or data requested by the comptroller or have failed to sufficiently respond to any recommendations made by the comptroller pursuant to section sixty-one of this article; or

b. the comptroller determines that the municipality meets the following criteria that the municipality, in each of its last two completed fiscal years, had at least one of the following:

(i) an unplanned operating deficit in a major operating fund in excess of one and one half per centum of such major operating fund's expenditures in the last completed fiscal year;

(ii) an unappropriated or unreserved fund balance deficit in the municipality's general fund; or

(iii) a ratio of non-recurring revenues used to fund recurring expenditures to total expenditures in excess of a benchmark determined by the comptroller and had a ratio of debt service to total revenue in excess of a benchmark determined by the comptroller.

2. For each municipality identified pursuant to subdivision one of this section, the comptroller shall notify the chief executive officer, chief fiscal officer and governing body of the affected municipality that the municipality has fallen within the criteria set forth in subdivision one of this section and of their designation of level two fiscal

stress. The notification shall include details of the determination and the criteria used. Such notification shall be made in such manner as the comptroller deems appropriate. The chief executive officer and governing body of the municipality, upon notification by the comptroller that they have been designated level two fiscal stress, shall be required to fulfill the following conditions within the next succeeding fiscal year:

a. develop a corrective action plan that details specific courses of action that have been taken or will be taken to address the fiscal stress identified by the comptroller; and

b. adopt a four-year financial plan in such form as may be prescribed by the comptroller.

3. The financial plan shall be adopted no later than the last date on which the municipality's budget is required to be adopted, and may be modified from time to time. The financial plan shall provide that the operating funds of the municipality will be in balance.

4. The chief fiscal officer of the municipality shall, until otherwise notified by the comptroller, prepare and submit to the governing body of the municipality monthly financial reports, within fifteen days from the end of each month, and prepare and submit to the comptroller quarterly financial reports, within fifteen days from the end of each quarter, both in such form as may be prescribed by the comptroller. In the event that the comptroller provides any recommendations regarding any reports required by this subdivision, the chief executive officer shall prepare a response to the comptroller's recommendations. Such response shall include, with respect to each recommendation, an acceptance statement for actions taken or proposed to be taken and if no action is warranted or is to be taken or proposed, a local law shall be proposed by the chief executive officer and must be approved by a majority of the governing body.

§ 64. Level three fiscal stress. 1. Based upon the comptroller's review of annual financial report data and other appropriate data and information pursuant to section sixty-one of this article, the comptroller may identify those level two fiscal stress municipalities that the comptroller believes fit within any of the following criteria: a level two fiscal stress municipality, in each of its last two completed fiscal years, had at least one of the following:

a. an unplanned operating deficit in a major operating fund in excess of one and one half per centum of the major operating fund's expenditures in the last completed fiscal year;

b. an unappropriated or unreserved fund balance deficit in the municipality's general fund; or

c. a ratio of non-recurring revenues used to fund recurring expenditures to total expenditures in excess of a benchmark determined by the comptroller and had a ratio of debt service to total revenue in excess of a benchmark determined by the comptroller.

2. a. For each municipality identified pursuant to subdivision one of this section, the comptroller shall notify the chief executive officer, chief fiscal officer and governing body of the affected municipality that the municipality has fallen within the criteria set forth in subdivision one of this section and of their designation of level three fiscal stress. The notification shall include details of the determination and the criteria used. Such notification shall be made in such manner as the comptroller deems appropriate. The chief executive officer and governing body of the municipality, upon notification by the comptroller that they have been designated level three fiscal stress, shall

be required to fulfill the following conditions within the next succeeding fiscal year:

(i) develop a corrective action plan that details specific courses of action that have been taken or will be taken to address the fiscal stress identified by the comptroller; and

(ii) adopt a four-year financial plan in such form as may be prescribed by the comptroller.

(b) (i) The chief executive officer or individual or body responsible for the preparation of the tentative budget, until otherwise notified by the comptroller, shall annually submit the tentative budget for the next succeeding fiscal year and the proposed four-year financial plan for review by the comptroller. Such tentative budget shall be submitted to the comptroller within five days after its preparation, but in no event later than thirty days prior to the commencement of the next succeeding fiscal year. The proposed four-year financial plan shall be submitted at the same time as the tentative budget. The comptroller shall in each such year examine such tentative budget and financial plan and make recommendations thereon to the municipality, within fifteen days of receipt thereof. Such recommendations shall be made after review of the estimates of revenues and expenditures of such municipality and such other information as the comptroller deems appropriate, and shall be made prior to the adoption of the final budget. At least forty-eight hours prior to the adoption of the final budget, the chief executive officer or individual or body responsible for the preparation of the tentative budget of the municipality shall prepare a response to the comptroller's recommendations. Such response shall include, with respect to each recommendation, an acceptance statement for actions taken or proposed to be taken and if no action is warranted or is to be taken or proposed, a local law shall be proposed by the chief executive officer and must be approved by a majority of the governing body. The comptroller's recommendations and the acceptance statement and rejected recommendations thereto shall be distributed to each member of the governing body, filed with the clerk of the municipality and made a part of the budget document. When so filed, such response shall be a public record open to inspection by any interested person. The response shall also be delivered to the state division of the budget, the office of the state comptroller, the chair of the assembly ways and means committee and the chair of the senate finance committee.

(ii) Notwithstanding the provisions of section thirty of this chapter, the chief fiscal officer of the municipality, until otherwise notified by the comptroller, shall submit the annual financial report no later than thirty days from the close of the fiscal year for which the report is prepared.

§ 65. Fiscal crisis. 1. Based upon the comptroller's review of annual financial report data and other appropriate data and information pursuant to section sixty-one of this article, the comptroller shall identify those municipalities that fit within any of the following criteria:

a. the municipality had unplanned general fund operating deficit that exceeded twenty percent of general fund expenditures as of the close of the last preceding fiscal year and had an unappropriated or unreserved fund balance deficit that exceeds twenty-five percent of the expenditures in the general fund as of the close of the last preceding fiscal year;

b. twice, within a five-year period, the municipality either has been authorized pursuant to law to issue, and has adopted resolutions authorizing the issuance of, bonds to finance a deficit, and/or directly or

indirectly utilized the proceeds of debt issued by any public benefit corporation or not-for-profit corporation to fund a deficit of the municipality;

c. the municipality, due to conditions of fiscal stress, has defaulted in the payment of principal or interest on its bonds or notes, or such default is imminent;

d. the municipality, due to conditions of fiscal stress or negative credit factors, is unable to sell its obligations in the general public market.

2. a. For each municipality identified pursuant to subdivision one of this section, the comptroller shall notify the chief executive officer, chief fiscal officer and governing body of the affected municipality that the municipality has fallen within the criteria set forth in subdivision one of this section and of their designation of fiscal crisis. The notification shall include details of the determination and the criteria used. Such notification shall be made in such manner as the comptroller deems appropriate. The chief executive officer and governing body of the municipality, upon notification by the comptroller that they have been designated fiscal crisis, shall be required to fulfill the following conditions within the next succeeding fiscal year:

b. Each municipality identified as fiscal crisis shall be subject to the provisions of this section, and such requirements of sections sixty-two, sixty-three and sixty-four of this article as the comptroller shall deem appropriate.

3. The comptroller shall, within forty-five days after notifying a municipality of their designation of fiscal crisis, introduce program legislation authorizing the creation of a financial control board as defined in this article for the affected municipality. The comptroller shall present a report detailing the designation of fiscal crisis for the affected municipality and their recommendations regarding the need for a financial control board to the governor, speaker of the assembly and temporary president of the senate no later than thirty days after the introduction of the program legislation. The assembly ways and means committee and senate finance committee shall hold a joint legislative hearing on the affected municipality and the proposed imposition of a financial control board no later than fourteen days after receiving such report from the comptroller. The assembly and senate shall have eight months after such hearing is held to either approve or disapprove the comptroller's program legislation creating a financial control board for the affected municipality.

4. The municipality shall not issue any further bonds or bond anticipation notes unless and until the affordability of such additional debt to the tax base supporting the indebtedness has been reviewed by the comptroller and the terms of the debt is approved by the comptroller. The municipality shall respond in writing to recommendations, if any, which the comptroller may make thereon. The comptroller may require the chief fiscal officer of the municipality to prepare and submit (a) a plan which details the projected fiscal impact of the proposed issuance of bonds or bond anticipation notes including financing costs, future direct and indirect operating costs of, and any resulting revenues from, the object or purpose to be financed; and (b) an analysis of the affordability to the tax base supporting the debt service or the bonds or notes. The comptroller may require such other information as the comptroller deems necessary to complete the review of affordability. The comptroller shall make any recommendations and approve or disapprove

within thirty days of receipt of all information necessary to complete the review of affordability.

5. Notwithstanding any other provision of law, no municipality which is subject to this section shall file any petition authorized by title six-A of article two of the local finance law.

§ 66. New York state board of local government deficit financing authorization. 1. a. There is hereby created the New York state board of local government deficit financing authorization which shall have and exercise the powers and duties set forth in subdivision two of this section.

b. Such board shall consist of five members as follows: one of the members shall be appointed by the governor, who shall be the chair, one of the members shall be appointed by the temporary president of the senate, one of the members shall be appointed by the speaker of the assembly, one of the members shall be appointed by the minority leader of the senate and one of the members shall be appointed by the minority leader of the assembly. 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 functions to any other person.

c. The members of the board shall serve for a term of one year.

d. Three members of the board shall constitute a quorum, and the board shall have the power to act by a majority vote of the total number of members of the board without a vacancy.

e. The members of the board shall not receive compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

2. a. The board shall have the power to authorize the issuance of bonds by a municipality to fund a deficit existing as of the close of the last preceding fiscal year of the municipality or projected to exist as of the close of the current fiscal year of the municipality.

b. The board shall only be authorized to authorize the issuance of bonds by a municipality to fund such a deficit upon a: (i) two-thirds of the total membership of the legislative body of a municipality; or (ii) the chief executive officer of a municipality concurred in by a majority of the total membership of the legislative body for such municipality; and (iii) a designation of level three fiscal stress pursuant to section sixty-four of this article; or (iv) a designation of fiscal crisis pursuant to section sixty-five of this article.

c. Prior to the board authorizing the issuance of bonds to fund such a deficit pursuant to this subdivision, the comptroller shall first review and confirm the existence of the deficit, as well as certify the amount of the deficit. As soon as practicable after the request to the board is made, but in no event prior to the close of the current fiscal year of the municipality in the case of a projected deficit, the municipality shall prepare a report detailing the amount and cause of the deficit and submit to the comptroller such report, together with the municipality's independent audit report for its last completed fiscal year, if any such audit report has been or is to be prepared, and such other information as the comptroller may deem necessary. Within thirty days after receiving all necessary reports and information, the comptroller shall: (i)

perform such reviews as may be necessary; (ii) confirm the existence and certify the amount of the deficit; and (iii) so notify the board.

d. After the comptroller notifies the board of the existence of the deficit and the amount of the deficit as certified by the comptroller, the board shall then make a determination whether to authorize the issuance of bonds by the municipality to fund the deficit. In making such a determination, the board may consider several factors, including, but not limited to:

(i) the size of the deficit as a percentage of the municipality's overall budget;

(ii) the ability of the municipality to liquidate the deficit by means other than through the issuance of bonds;

(iii) the existence of deficits in the past five years and the actions taken by the municipality to liquidate the deficit;

(iv) other factors as deemed relevant by the board.

e. Once the board has determined that a municipality shall have authorization for the issuance of bonds pursuant to this section, the board shall issue a written instrument authorizing the municipality to issue bonds in the amount of the deficit, as certified by the comptroller pursuant to paragraph c of this subdivision. In anticipation of the issuance of such bonds, bond anticipation notes may be issued by the municipality.

f. It is hereby determined that the financing of deficits as hereinbefore described is an object or purpose of the municipality for which indebtedness may be incurred, the period of probable usefulness of which is determined to be ten years, computed from the date of such bonds or the date of the first bond anticipation note issued in anticipation of the sale of such bonds, whichever is earlier. The board, in authorizing the issuance of bonds, may prescribe a maximum maturity of the bonds, not to exceed ten years, computed from the date of such bonds or the date of the first bond anticipation note issued in anticipation of such bonds, whichever is earlier.

g. The board shall make a determination whether to authorize the issuance of bonds to finance a deficit pursuant to this subdivision within thirty days of receiving the report from the comptroller pursuant to paragraph c of this subdivision.

3. A municipality that has requested authorization to issue bonds to fund a deficit pursuant to this section may issue bond anticipation notes for a term not to exceed one year for the purpose of liquidating such deficit prior to a determination by the board to authorize the issuance of bonds by the municipality to fund the deficit pursuant to this section. In the event that bond anticipation notes are issued in an amount in excess of the amount of such deficit as certified by the comptroller, such municipality shall, from funds other than proceeds of bonds or bond anticipation notes, either redeem such bond anticipation notes in the amount by which the amount of such bond anticipation notes exceed the amount of such deficit as certified by the comptroller or deposit a sum equal to the amount by which such bond anticipation notes exceed the amount of such deficit as certified by the comptroller into a reserve fund for the payment of bonded indebtedness established pursuant to section six-h of this chapter. In the event that bond anticipation notes are issued and the board does not authorize the issuance of bonds to finance such deficit, such municipality shall, from funds other than the proceeds of bonds or bond anticipation notes, redeem the full amount of such bond anticipation notes.

4. The determination of the board whether to authorize the issuance of bonds pursuant to this section shall be deemed final and may only be subject to review by a proceeding commenced under article seventy-eight of the civil practice law and rules, provided that such proceeding is commenced within thirty days of the notice of the determination given by certified mail return receipt requested rendering such final determination.

5. The comptroller shall provide all necessary assistance to the board including, but not limited to, staffing and support, so that the board may carry out its powers and duties pursuant to this section.

6. To facilitate the marketing of bonds authorized pursuant to law to be issued to fund a deficit, the municipality may, notwithstanding any limitation on the private sales of bonds provided by law and subject to the approval of the comptroller of the terms and conditions of such sales: (a) arrange for the underwriting of such bonds at private sale through negotiated fees or by sale of such bonds to an underwriter at a price less than the sum of par value of, and the accrued interest on, such obligations; or (b) arrange for the private sale of such bonds through negotiated agreement, with compensation for such sales to be provided by negotiated agreement and/or negotiated fee, if required. The cost of such underwriting or private placement shall be deemed a preliminary cost for purposes of section 11.00 of the local finance law.

7. Except as provided in this article, all proceedings in connection with the issuance of bonds or bond anticipation notes authorized to be issued pursuant to this section shall be had and taken in accordance with the provisions of the local finance law, provided, however, that any resolution or resolutions authorizing the issuance of such bonds shall not be subject to either a mandatory or permissive referendum.

8. A municipality which is hereafter authorized pursuant to law to issue bonds to fund a deficit:

a. Shall be subject to such requirements of subdivision two of section sixty-four of this article as the comptroller deems appropriate.

b. In any fiscal year beginning with the fiscal year in which the municipality issues debt to fund such deficit, to and including the last fiscal year during which such debt or any debt incurred to refund such debt is outstanding, the municipality shall not issue any further bonds or bond anticipation notes unless and until the affordability of such additional debt to the tax base supporting the indebtedness has been reviewed by the comptroller and the municipality has responded in writing to recommendations, if any, which the comptroller may, in his discretion, make thereon. The comptroller may require the chief fiscal officer of the municipality to prepare and submit: (i) a plan which details the projected fiscal impact of the proposed issuance of bonds or bond anticipation notes including financing costs, and future direct and indirect operating costs of, and any resulting revenues from, the object or purpose to be financed; and (ii) an analysis of the affordability to the tax base supporting the debt service on the bonds or notes. The comptroller may require such other information as the comptroller deems necessary to complete the review of affordability. The comptroller shall make any recommendations within thirty days of receipt of all information necessary to complete the review of affordability.

c. For each fiscal year occurring during the time deficit bonds or notes are outstanding, the chief fiscal officer of the municipality on whose behalf such deficit bonds or notes have been issued shall monitor its budgets and for each budget, prepare a quarterly report of summarized budget data depicting overall trends of actual revenues and budget

expenditures for the entire budget rather than individual line items. Such reports shall compare revenue estimates and appropriations as set forth in such budget with the actual revenues and expenditures made to date. All quarterly reports shall be accompanied by a recommendation by the chief executive officer setting forth any remedial action necessary to resolve any unfavorable budget variance including the overestimation of revenues and the underestimation of appropriations, and shall be completed within thirty days of the end of each quarter. The above quarterly budgetary report shall be prepared in accordance with generally accepted accounting principles. These reports shall be submitted to the local governing body and chief executive officer of such municipality, the state director of the budget, the state comptroller, the chairman of the assembly ways and means committee and the chairman of the senate finance committee.

d. Paragraphs a, b and c of this subdivision shall also apply to any municipality that directly or indirectly utilizes the proceeds of debt issued by any public benefit corporation or not-for-profit corporation to fund a deficit of the municipality. Any such municipality shall comply with such paragraphs beginning with its fiscal year in which such debt has been issued, to and including the last fiscal year during which such debt or any debt to refund such debt is outstanding.

§ 67. Inconsistency with other laws. To the extent this article is inconsistent with any general, special or local law concerning budget procedures, this article shall apply.

§ 68. Notice of benchmarks and additional criteria. The comptroller, at least biennially, shall provide to municipalities notice, in such manner as the comptroller deems appropriate, of all benchmarks, all commonly accepted criteria or fiscal stress or susceptibility to fiscal stress, and any definition of non-recurring revenues as may be specified by the comptroller for purposes of this article.

§ 69. Reports. Not later than December thirty-first of each year, the comptroller shall file an annual report with the governor, the chair of the senate finance committee, the chair of the assembly ways and means committee, and the state director of the budget on the financial condition, during their last completed fiscal years, of the municipalities which are subject to the provisions of section sixty-three, sixty-four, sixty-five or sixty-six of this article. The report shall be in sufficient form and detail to permit an accurate depiction of the financial condition of each such municipality. The comptroller shall also notify the governor, the chair of the senate finance committee, the chair of the assembly ways and means committee, and the state director of the budget, as soon as practicable, in any case where the comptroller has identified a municipality pursuant to section sixty-three, sixty-four or sixty-six of this article.

§ 69-a. No duplication. Nothing in this article shall be interpreted to require either the comptroller or a municipality to duplicate an oversight or reporting function due to the application of more than one provision of this article or any other related provision of law to such function.

§ 3. This act shall take effect immediately. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made on or before such date.