

# STATE OF NEW YORK

5786

2021-2022 Regular Sessions

## IN ASSEMBLY

February 25, 2021

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

AN ACT to amend the local finance law, in relation to the establishment of an electronic open auction public bond sale pilot program solely for certain municipalities; and providing for the repeal of such provisions upon the expiration thereof

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

1 Section 1. The local finance law is amended by adding a new section  
2 58.11 to read as follows:

3 § 58.11 Electronic open auction public bond sale pilot program. a. As  
4 used in this section:

5 1. "Municipality" means a county with a population greater than  
6 fifty-seven thousand, and less than sixty-one thousand, that has issued  
7 at least three million five hundred thousand dollars in bonds within at  
8 least one of the preceding three years.

9 2. "Nationally recognized electronic securities bidding service" means  
10 a bidding service that is approved by the superintendent pursuant to  
11 subdivision b of this section.

12 3. "Open auction" means a bond sale procedure that allows a bidder to  
13 receive information with respect to the ranking of its bids prior to the  
14 conclusion of the bidding period in accordance with the municipality's  
15 notice of such bond sale circulated in accordance with applicable  
16 requirements of this chapter.

17 4. "Program" means the electronic open auction public bond sale pilot  
18 program established pursuant to this section.

19 5. "Superintendent" means the superintendent of financial services.

20 b. 1. There is hereby established an electronic open auction bond sale  
21 pilot program authorizing municipalities to conduct open auction public  
22 bond sales through any nationally recognized electronic securities  
23 bidding service approved by the superintendent. Nationally recognized

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

LBD01979-01-1

1 electronic securities bidding services desiring to operate an electronic  
2 open auction shall apply to the superintendent for authorization to do  
3 so by filing an application with the superintendent. The superintendent  
4 shall make available an application form that provides the superinten-  
5 dent with information regarding the technology and security practices  
6 maintained by the nationally recognized electronic securities bidding  
7 service, the requirements to be established for bidding by bidders, the  
8 methods by which auction sales are conducted, the experience of the  
9 nationally recognized electronic securities bidding service in conduct-  
10 ing electronic open auctions of bonds, and other information the super-  
11 intendent may deem relevant.

12 2. If the superintendent determines that the requirements and condi-  
13 tions of the open auction are in accordance with the provisions of this  
14 chapter and the bidding service provides a secure, open and competitive  
15 opportunity for qualified bidders to submit proposals, the application  
16 shall be deemed approved.

17 3. The superintendent shall post information regarding the nationally  
18 recognized electronic securities bidding services that have been  
19 approved for use by municipalities on the department of financial  
20 services website.

21 c. If the chief fiscal officer of the municipality has authorized the  
22 receipt of bids in an electronic open auction format, such electronic  
23 bids may be submitted in the form of open auctions conducted through a  
24 nationally recognized electronic securities bidding service which entity  
25 shall be deemed to be the designated receiving device pursuant to  
26 section 58.00 of this title. Notice of any bond sale shall provide for  
27 the manner in which the bidding period may be extended and the basis for  
28 determination of the winning bidder.

29 d. Notwithstanding the provisions of subdivision one of section three  
30 hundred five of the state technology law, if the notice of sale for the  
31 open auction public bond contains a provision that bids will only be  
32 accepted electronically in the manner provided in such notice of sale,  
33 the municipality shall not be required to accept non-electronic bids in  
34 any form.

35 e. The municipality's chief fiscal officer shall administer the  
36 program and shall publish its policies and procedures for the procure-  
37 ment of nationally recognized electronic securities bidding services on  
38 the municipality's internet website. Such policies and procedures shall  
39 include policies to prevent fraud. Except as modified by this section,  
40 the municipal program shall comply with this chapter and all other  
41 applicable laws, rules and regulations related to the sale of bonds.

42 f. The municipality's chief fiscal officer shall review the electronic  
43 open auction bidding process to ensure that the bond sale was completed  
44 in a timely fashion; the sale was completed without errors; and the  
45 process was favorable as compared to the method currently used by the  
46 municipality.

47 g. The municipality shall conduct evaluations of the program annually  
48 with a summary evaluation at the end of the two year program. The muni-  
49 cipality shall submit the evaluations to the superintendent, the tempo-  
50 rary president of the senate and the speaker of the assembly. Such  
51 report shall include, but not be limited to, any demonstrated evidence  
52 that sale of public bonds using electronic open auctions is comparable  
53 to the cost of issuing public bonds through the current sealed bid proc-  
54 ess, the fees associated with nationally recognized electronic securi-  
55 ties bidding services, whether the use of electronic open auctions

1 resulted in an increased number of bidders and whether the process was  
2 favorable as compared to the method currently used by the municipality.

3 § 2. This act shall take effect immediately and shall expire January  
4 1, 2024 when upon such date the provisions of this act shall be deemed  
5 repealed.