STATE OF NEW YORK

7562

2021-2022 Regular Sessions

IN ASSEMBLY

May 13, 2021

Introduced by M. of A. DAVILA, J. D. RIVERA -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to restructuring unsustainable sovereign and subnational debt

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

Section 1. The banking law is amended by adding a new article 7 to read as follows:

ARTICLE 7

SOVEREIGN AND SUBNATIONAL DEBT

Section 300. Legislative intent.
301. Definitions.
302. Petition for relief; recognition.
303. Notification of creditors.
304. Auditing process.
305. Submission, contents and voting on plan.
306. Financing the restructuring.
307. Priority of repayment.
308. Adjudication of disputes.
309. Application; opt in.

§ 300. Legislative intent. The purpose of this article is to provide effective mechanisms for restructuring unsustainable sovereign and subnational debt so as to reduce:

1. the social costs of sovereign and subnational debt crises;

2. systemic risk to the financial system;

3. creditor uncertainty; and

4. the need for sovereign and subnational debt bailouts, which are costly and create moral hazard.

§ 301. Definitions. For purposes of this article:

1. "creditor" means a person or entity that has a claim against a state;

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

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2. "claim" means a payment claim against a state for monies borrowed or for the state's guarantee of, or other contingent obligation on, monies borrowed; the term "monies borrowed" shall include the following, whether or not it represents the borrowing of money: monies owing under bonds; debentures; notes, or similar instruments; monies owing for the deferred purchase price of property or services, other than trade accounts payable arising in the ordinary course of business; monies owing on capitalized lease obligations; monies owing on or with respect to letters of credit, bankers' acceptances, or other extensions of credit; and monies owing on money market instruments or instruments used to finance trade;

3. "comprehensive audit" means a supervisory action taken to examine and evaluate the public debt contracting, refinancing, or negotiation process, in order to determine the lawfulness, transparency, quality, efficacy, efficiency, and sustainability thereof;

4. "plan" means a debt restructuring plan contemplated by section three hundred five of this article;

5. "state" means a sovereign nation; or unincorporated territory; or any subnational unit thereof, excluding any municipality whose adjustment or debts is governed by 11 U.S.C. 9; and

6. "supervisory authority" means an independent body referred by the New York state senate finance committee.

§ 302. Petition for relief; recognition. 1. A state may invoke application of this article by filing a voluntary petition for relief with the supervisory authority.

2. Such petition shall certify that the state:

(a) seeks relief under this article, and has not previously sought relief under this article, or under any other law that is substantially in the form of this article, during the past ten years;

(b) needs relief under this article to restructure claims that, absent such relief, would constitute unsustainable debt of the state;

(c) agrees to restructure those claims in accordance with this article;

(d) agrees to all other terms, conditions and provisions of this article; and

(e) has duly enacted any national or subnational law needed to effectuate these agreements. If requested by the supervisory authority, such petition shall also attach documents and legal opinions evidencing compliance with this paragraph.

3. Immediately after such a petition for relief has been filed, and so long as such filing has not been dismissed by the supervisory authority for lack of good faith, the terms, conditions, and provisions of this article shall:

(a) apply to the debtor-creditor relationship between the state and its creditors to the extent such relationship is governed by the law of this jurisdiction;

(b) apply to the debtor-creditor relationship between the state and its creditors to the extent such relationship is governed by the law of another jurisdiction that has enacted law substantially in the form of this article; and

(c) be recognized in, and by, all other jurisdictions that have enacted law substantially in the form of this article.

§ 303. Notification of creditors. 1. Within thirty days after filing its petition for relief, the state shall notify all of its known creditors of its intention to negotiate a plan under this article.

2. The supervisory authority shall prepare and maintain a current list of creditors of the state and verify claims for the purposes of supervising voting under this article.

§ 304. Auditing process. 1. A comprehensive audit shall be conducted.

2. The supervisory authority shall choose an independent body to conduct such comprehensive audit.

3. The costs associated with a comprehensive audit shall be borne by the state.

4. The audit process shall abide by the general principles related to the International Standards of Supreme Audit Institutions 100 issued by the International Organization of Supreme Audit Institutions.

§ 305. Submission, contents and voting on plan. 1. The state may submit a plan to its creditors at any time, and may submit alternative plans from time to time.

2. No other person or entity may submit a plan on behalf of the state.

3. A plan shall:

(a) designate classes of claims in accordance with subdivision six of this section;

(b) specify the proposed treatment of each class of claims;

(c) provide the same treatment for each claim of a particular class, unless the holder of a claim agrees to a less favorable treatment;

(d) disclose any claims not included in the plan's classes of claims;

(e) provide adequate means for the plan's implementation including, with respect to any claims, curing or waiving any defaults or changing the maturity dates, principal amount, interest rate, or other terms or canceling or modifying any liens or encumbrances; and

(f) certify that, if the plan becomes effective and binding on the state and its creditors under subdivision four of this section, the state's debt will become sustainable.

4. A plan shall become effective and binding on the state and its creditors when it has been submitted by the state and agreed to by each class of such creditors' claims designated in the plan under subdivision three of this section. Thereupon, the state shall be discharged from all claims included in those classes of claims, except as provided in the plan.

5. A class of claims has agreed to a plan if creditors holding at least two-thirds in amount and more than one-half in number of the claims of such class voting on such plan agree to the plan.

6. Each class of claims shall consist of claims against the state that are equal in priority, provided that:

(a) equal claims need not all be included in the same class;

(b) claims of governmental or multi-governmental entities each shall be classed separately; and

(c) claims that are governed by this article or the law of another jurisdiction that is substantially in the form of this article shall not be classed with other claims.

§ 306. Financing the restructuring. 1. Subject to subdivision three of this section the state shall have the right to borrow money on such terms and conditions as it deems appropriate.

2. The state shall notify all of its known creditors of its intention to borrow under subdivision one of this section, the terms and conditions of the borrowing, and the proposed use of the loan proceeds. Such notice shall also direct those creditors to respond to the supervisory authority within thirty days as to whether they approve or disapprove of such loan.

3. Any such loan shall be approved by creditors holding at least two-thirds in amount of the claims of creditors responding to the supervisory authority within that thirty-day period.

4. In order for the priority of repayment, and corresponding subordination, under section three hundred seven of this article to be effective, any such loan shall additionally be approved by creditors holding at least two-thirds in principal amount of the covered claims of the creditors responding to the supervisory authority within that thirty-day period. Claims shall be deemed to be covered if they are governed by this article or by the law of another jurisdiction that is substantially in the form of this article.

§ 307. Priority of repayment. 1. The state shall repay loans approved under this article prior to paying any other claims.

2. The claims of creditors of the state are subordinated to the extent needed to effectuate the priority payment under this section. Such claims are not subordinated for any other purpose.

3. The priority of payment, and corresponding subordination, under this section is expressly subject to the approval by creditors under subdivision four of section three hundred six of this article.

§ 308. Adjudication of disputes. A court of competent jurisdiction may appoint a referee or a special master to make recommendations to the court regarding the resolution of any disputes arising under this article.

§ 309. Application; opt in. 1. This article applies where, by contract or otherwise,

(a) the law of New York state governs the debtor-creditor relationship between a state and its creditors; and

(b) the application of this article is invoked in accordance with section three hundred two of this article.

2. Where this article applies, it shall operate retroactively and, without limiting the foregoing, shall override any contractual provisions that are inconsistent with the provisions of this article.

3. Any creditors of the state whose claims are not otherwise governed by this article may contractually opt in to this article's terms, conditions, and provisions.

4. The terms, conditions, and provisions of this article shall apply to the debtor-creditor relationship between the state and creditors opting in under subdivision one of this section as if such relationship were governed by the laws of New York state under subdivision three of section three hundred two of this article.

§ 2. This act shall take effect immediately.