

# STATE OF NEW YORK

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6610

2021-2022 Regular Sessions

## IN SENATE

May 10, 2021

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Introduced by Sen. KRUEGER -- (at request of the NYC Office of Management and Budget) -- read twice and ordered printed, and when printed to be committed to the Committee on Cities 1

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 or interest, interest rate exchange agreements of the city of New York, and the refunding of bonds; to amend chapter 868 of the laws of 1975 constituting 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 section 1 of item QQ of subpart B  
3 of part XXX of chapter 58 of the laws of 2020, is amended to read as  
4 follows:

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

10 § 2. The closing paragraph of paragraph a of section 54.90 of the  
11 local finance law, as amended by section 2 of item QQ of subpart B of  
12 part XXX of chapter 58 of the laws of 2020, is amended to read as  
13 follows:

14 Notwithstanding the foregoing, whenever in the judgment of the finance  
15 board of the city of New York the interest of such city would be served  
16 thereby, the city of New York may without further approval issue bonds

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

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

18 § 3. The opening paragraph of subdivision 1 of paragraph d of section  
19 54.90 of the local finance law, as amended by section 3 of item QQ of  
20 subpart B of part XXX of chapter 58 of the laws of 2020, is amended to  
21 read as follows:

22 On or before July fifteenth, two thousand [~~twenty-one~~] twenty-two the  
23 mayor and comptroller of the city of New York may:

24 § 4. The opening paragraph of paragraph a of section 57.00 of the  
25 local finance law, as amended by section 4 of item QQ of subpart B of  
26 part XXX of chapter 58 of the laws of 2020, is amended to read as  
27 follows:

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

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

11 § 5. Subdivision 3 of paragraph g of section 90.00 of the local  
12 finance law, as amended by section 5 of item QQ of subpart B of part XXX  
13 of chapter 58 of the laws of 2020, is amended to read as follows:

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

32 § 6. Subdivision 1 of section 10-a of chapter 868 of the laws of 1975,  
33 constituting the New York state financial emergency act for the city of  
34 New York, as amended by section 6 of item QQ of subpart B of part XXX of  
35 chapter 58 of the laws of 2020, is amended to read as follows:

36 1. In the event that after the date on which the provisions of this  
37 act become operative, any notes or bonds are issued by the city prior to  
38 July 1, [~~2021~~] 2022, or any bonds are issued by a state financing agen-  
39 cy, the state of New York hereby authorizes the city and authorizes and  
40 requires such state financing agency to include a pledge and agreement  
41 of the state of New York in any agreement made by the city or such state  
42 financing agency with holders or guarantors of such notes or bonds that  
43 the state will not take any action which will (a) substantially impair  
44 the authority of the board during a control period, as defined in subdi-  
45 vision twelve of section two of this act as in effect on the date such  
46 notes or bonds are issued (i) to approve, disapprove, or modify any  
47 financial plan or financial plan modification, including the revenue  
48 projections (or any item thereof) contained therein, subject to the  
49 standards set forth in paragraphs a, c, d, e and f of subdivision one of  
50 section eight of this act as in effect on the date such notes or bonds  
51 are issued and paragraph b of such subdivision as in effect from time to  
52 time, (ii) to disapprove a contract of the city or a covered organiza-  
53 tion if the performance of such contract would be inconsistent with the  
54 financial plan or to approve or disapprove proposed short-term or long-  
55 term borrowing of the city or a covered organization or any agreement or  
56 other arrangement referred to in subdivision four of section seven of

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

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

47 § 7. Section 5 of chapter 142 of the laws of 2004, amending the local  
48 finance law relating to interest rate exchange agreements of the city of  
49 New York and refunding bonds of such city, as amended by section 7 of  
50 item QQ of subpart B of part XXX of chapter 58 of the laws of 2020, is  
51 amended to read as follows:

52 § 5. This act shall take effect immediately, provided, that section  
53 three of this act shall expire and be deemed repealed July 15, [~~2021~~]  
54 2022.

55 § 8. Separability. If any clause, sentence, paragraph, section or part  
56 of this act shall be adjudged by any court of competent jurisdiction to

1 be invalid, such judgment shall not affect, impair or invalidate the  
2 remainder thereof, but shall be confined in its operation to the clause,  
3 sentence, paragraph, section or part thereof directly involved in the  
4 controversy in which such judgment shall have been rendered.  
5 § 9. This act shall take effect immediately.