

STATE OF NEW YORK

2102--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 23, 2023

Introduced by M. of A. DAVILA, RIVERA, GONZALEZ-ROJAS, CRUZ, CLARK, REYES, MAMDANI, BURDICK, MITAYNES, GALLAGHER, COLTON, FORREST, SIMON, TAYLOR, JACKSON -- read once and referred to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. Debt reconciliation.

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:

1. reduce the social costs of sovereign and subnational debt crises to residents of this state;

2. reduce systemic risk to the financial system, a system that is concentrated in this state;

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

LBD02418-04-3

1 3. reduce creditor uncertainty, including to the numerous holders of
2 sovereign debt that are residents in this state;

3 4. strengthen the role of the state of New York as a primary location
4 for the issuing and trading of sovereign debt;

5 5. reduce the need for sovereign and subnational debt bailouts, which
6 create moral hazard and are costly to residents of this state;

7 6. otherwise protect economic activity within this state's borders, by
8 reducing the likelihood of a sovereign debt default which could adverse-
9 ly impact the state's economy; and

10 7. reduce, out of universal human rights and humanitarian imperatives,
11 the social cost of unresolved sovereign debt crises imposed on the
12 people of insolvent nations, especially the poorest among them, taking
13 due account of creditor rights.

14 § 301. Definitions. For purposes of this article:

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

17 2. "claim" means a payment claim against a state for monies borrowed
18 or for the state's guarantee of, or other contingent obligation on,
19 monies borrowed; the term "monies borrowed" shall include the following,
20 whether or not it represents the borrowing of money: monies owing under
21 bonds; debentures; notes, or similar instruments of original maturity of
22 at least one year; monies owing for the deferred purchase price of prop-
23 erty or services, other than trade accounts payable arising in the ordi-
24 nary course of government operations; monies owing on capitalized lease
25 obligations; monies owing on or with respect to letters of credit, bank-
26 ers' acceptances, or other extensions of credit of original maturity of
27 at least one year;

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

30 4. "state" means a sovereign nation; or unincorporated territory; or
31 any subnational unit thereof, excluding any municipality whose adjust-
32 ment or debts is governed by 11 U.S.C. 9; and

33 5. "independent monitor" means an individual appointed by the governor
34 and acceptable to the sovereign debtor and to the holders, or their
35 agents, of a majority of the obligations issued under New York law. The
36 monitor is meant to facilitate and encourage an effective, prompt and
37 fair agreement by the parties, as intended by this article.

38 § 302. Petition for relief; recognition. 1. A state may invoke appli-
39 cation of this article by filing a voluntary petition for relief with
40 the state of New York.

41 2. Such petition shall certify that the state:

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

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

47 (c) agrees to restructure those claims in accordance with this arti-
48 cle;

49 (d) agrees to all other terms, conditions and provisions of this arti-
50 cle;

51 (e) has duly enacted any national or subnational law needed to effec-
52 tuate these agreements. If requested by the independent monitor, such
53 petition shall also attach documents and legal opinions evidencing
54 compliance with this paragraph; and

55 (f) is cooperating with the International Monetary Fund to devise an
56 effective, efficient, timely and fair path back to sustainability.

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

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

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

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

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

17 2. The independent monitor shall prepare and maintain a current list
18 of creditors of the state and verify claims for the purposes of super-
19 vising voting under this article.

20 § 304. Debt reconciliation. The creditor claims shall be reconciled
21 against debtor records and any discrepancies shall be addressed between
22 the parties.

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

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

27 3. A plan shall:

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

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

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

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

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

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

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

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

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

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

53 (b) claims of governmental or multi-governmental entities holding
54 claims defined under this article shall be included with the claims of
55 private holders of such claims, and each shall be classed separately;
56 and

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

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

7 2. The state shall notify all of its known creditors of its intention
8 to borrow under subdivision one of this section, the terms and condi-
9 tions of the borrowing, and the proposed use of the loan proceeds. Such
10 notice shall also direct those creditors to respond to the independent
11 monitor within thirty days as to whether they approve or disapprove of
12 such loan.

13 3. Any such loan shall be approved by creditors holding at least two-
14 thirds in amount of the claims of creditors responding to the independ-
15 ent monitor within that thirty-day period.

16 4. In order for the priority of repayment, and corresponding subordi-
17 nation, under section three hundred seven of this article to be effec-
18 tive, any such loan shall additionally be approved by creditors holding
19 at least two-thirds in principal amount of the covered claims of the
20 creditors responding to the independent monitor within that thirty-day
21 period. Claims shall be deemed to be covered if they are governed by
22 this article or by the law of another jurisdiction that is substantially
23 in the form of this article.

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

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

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

32 § 308. Adjudication of disputes. The independent monitor may request
33 that a court of competent jurisdiction appoint a referee or a special
34 master to make recommendations to the court regarding the resolution of
35 any disputes arising under this article.

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

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

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

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

45 3. Any creditors of the state whose claims are not otherwise governed
46 by this article may contractually opt in to this article's terms, condi-
47 tions, and provisions.

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

53 § 2. This act shall take effect immediately.