STATE OF NEW YORK

7642

2023-2024 Regular Sessions

IN ASSEMBLY

May 26, 2023

Introduced by M. of A. BRAUNSTEIN -- read once and referred to the Committee on Cities

AN ACT to amend the local finance law, in relation to the maintenance and application of a general debt service fund for the city of New York, and agreements and covenants with respect to obligations issued by such city

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

Section 1. The local finance law is amended by adding a new section 54.15 to read as follows:

§ 54.15 Maintenance and application of a general debt service fund for the city of New York. (a) The following words shall have the following meanings unless the context shall indicate another or different meaning or intent.

(i) "Available tax levy" with respect to an issue of tax anticipation notes means, at any date of computation, the total amount of city real estate taxes or assessments projected, consistent with the financial plan then in effect, to be received in cash on or before the fifth day preceding the maturity date of such tax anticipation note issue, less amounts required during the period between the date of computation and the fifth day preceding such maturity date to be paid into the general debt service fund or otherwise required to pay interest payable on other outstanding city bonds and notes, principal, including payments into sinking funds, coming due on outstanding city bonds and principal to be paid from sources other than the proceeds of bonds or renewal notes on other outstanding city notes, exclusive of revenue anticipation notes or renewals thereof issued less than two years prior to the date of computation, but not including payments from sinking funds required by the terms of certain city bonds.

(ii) "City" means the city of New York.

(iii) "Comptroller" means the comptroller of the state of New York.

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

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(iv) "Fund" means the general debt service fund established pursuant to this section.

(v) "RAN debt service account" means the revenue anticipation note debt service account established within the fund pursuant to this section.

(vi) "TAN debt service account" means the tax anticipation note debt service account established within the fund pursuant to this section.

(b) The city shall maintain a general debt service fund for the purpose of paying debt service due or becoming due in the current fiscal year and in subsequent fiscal years. All monies in the fund shall be held by the comptroller, who shall administer and maintain the fund in accordance with the provisions of this section.

(c) All payments of or on account of real estate taxes or assessments, other than the proceeds of tax anticipation notes, shall be immediately upon receipt deposited in such fund. The comptroller shall retain, disburse and apply monies in the fund during each month as follows:

(i) During the first month of each fiscal quarter, there shall be retained in the fund all real estate tax payments deposited in the fund until there shall have been retained from monies so deposited during such month an amount equal to the total monthly debt service, computed as of the date of any disbursement of money from the fund, for the second and third months of such fiscal quarter; provided that such amount shall be reduced by any amount already on deposit in the fund, which may be used to pay the monthly debt service for such months. For purposes of this section, the term "fiscal quarter" shall mean the three-month period beginning July first, October first, January first or April first, and the term "monthly debt service" shall mean, as of any date of computation, the amount of monies equal to the aggregate of (1) all interest payable during such month on bonds and notes of the city, plus (2) the amount of principal, including payments into sinking funds, maturing or otherwise coming due during such month on all bonds of the city, excluding principal payments made from sinking funds required by the terms of certain city bonds, plus (3) the amount of principal to be paid on notes of the city during such month from sources other than the proceeds of bonds or renewal notes, exclusive of revenue anticipation notes and tax anticipation notes or renewals thereof issued less than two years prior to the date of computation.

(ii) During the second and third months of each fiscal quarter, there shall be retained in the fund all real estate tax payments deposited in the fund until there shall have been retained from monies so deposited during such month an amount equal to the total monthly debt service, computed as of the date of any disbursement of monies from the fund, for the first month of the next succeeding fiscal quarter; provided that such amount shall be reduced by any amount already on deposit in the fund, which may be used to pay the monthly debt service for such month.

(iii) During any month of a fiscal quarter, after the retentions required by subparagraphs (i) and (ii) of this paragraph have been made for such month, the comptroller shall deposit any remaining balance of real estate taxes received during such month, first into the TAN debt service account to the extent required under paragraph (f) of this section, and second into the general fund of the city.

(iv) The city may at any time pay into the fund any monies required by law to be used to pay monthly debt service and any other monies available for such purpose.

(d) If the mayor of the city at any time determines that retentions in the fund pursuant to the provisions of paragraph (c) of this section are

or are likely to be insufficient to provide for the payment of monthly debt service when due, in order to ensure that the amounts on deposit in the fund will be sufficient to pay monthly debt service when due, the mayor of the city shall require (i) that real estate tax receipts be retained in the fund in greater amounts or at earlier dates than the provisions of such paragraph require, or (ii) that other revenues or cash resources of the city be paid into the fund.

(e) The payment of monthly debt service of the city shall be made first from amounts retained in the fund. Amounts retained in the fund shall be used only to pay debt service of the city.

(f) Upon the issuance of any tax anticipation notes following the effective date of this section, the comptroller shall establish and, so long as any tax anticipation notes shall be outstanding, shall maintain a TAN debt service account within the fund for the purpose of paying the principal of tax anticipation notes.

(g) The city shall determine the date on which the principal due or to become due on an outstanding issue of tax anticipation notes shall equal ninety percent of the available tax levy with respect to such issue, and upon reasonable notice thereof, the comptroller shall commence on such date to pay into the TAN debt service account from collections of such taxes and assessments, after retaining amounts required to be deposited in the fund, amounts sufficient to pay when due, the principal of such issue of tax anticipation notes. The payments of the principal of tax anticipation notes shall be made first from amounts retained in the TAN debt service account.

(h) Upon the issuance of any revenue anticipation notes following the effective date of this section, the comptroller shall establish and, so long as any revenue anticipation notes shall be outstanding, shall maintain a RAN debt service account within the fund for the purpose of paying the principal of revenue anticipation notes. Each specific type of revenue in anticipation of which such notes are issued and available for such purpose shall be deposited in such account immediately upon receipt by the city. Where such revenue consists of state aid or other revenue to be paid to the city by the comptroller, on the date such revenue is payable to the city, the comptroller shall deposit such revenue directly into such account in lieu of payment to the city for the purpose of paying the principal of revenue anticipation notes.

(i) The city shall determine the date on which the principal due or to become due on an outstanding issue of revenue anticipation notes shall equal ninety percent of the total amount of revenue against which such notes were issued remaining to be paid to the city on or before the fifth day prior to the maturity date of such notes, and upon reasonable notice thereof, the comptroller shall commence on such date to retain in the RAN debt service account from amounts deposited or to be deposited therein of each specific type of revenue in anticipation of which revenue such anticipation notes were issued, an amount sufficient to pay when due, the principal of such revenue anticipation notes. Monies retained in such account shall vest immediately in the comptroller in trust for the benefit of the holders of the revenue anticipation notes in anticipation of which such notes were issued. No person having any claim of any kind in tort, contract or otherwise against such city shall have any right to or claim against any monies of the state appropriated by the state and in anticipation of which such notes have been issued, other than a claim for payment by the holders of such notes, and such monies shall not be subject to any order, judgment, lien, execution, attachment, setoff or counter-claim by any such person; provided, however,

that nothing contained in this paragraph shall be construed to limit, impair, impede or otherwise adversely affect in any manner the rights or remedies of the purchasers and holders and owners of any bonds or notes of the state or any agency, instrumentality, public benefit corporation or political subdivision thereof, including the city of New York, under which such purchasers and holders and owners have any right of payment of such bonds or notes by recourse to state aid or local assistance monies held by the state or for the payment of which bonds or notes state aid or local assistance monies are a designated source. The payment of the principal of revenue anticipation notes shall be made first from amounts retained in the RAN debt service account.

(j) Whenever the amount contained in the TAN debt service account or the RAN debt service account exceeds the amount required to be retained in such account such excess monies, including earnings on investments of monies in the fund, shall be withdrawn from such account and paid into the general fund of the city.

(k) The comptroller shall invest the monies retained in the fund in accordance with law.

(l) The limitations imposed upon the city by this section shall be in addition to any other limitations imposed upon the city by this chapter. In the event any other provisions of this chapter shall be inconsistent with the provisions of this section, the provisions of this section shall prevail.

(m) While the New York state financial emergency act for the city of New York remains in effect, such act shall prevail in the event any provision of such act shall be inconsistent with the provisions of this section. The powers, duties and obligations set forth in this section shall be subject to the powers, duties and obligations placed upon any state or local officer or agency, including but not limited to the New York state financial control board, by or pursuant to such act while such act remains in effect.

(n) Notwithstanding any other provision of this section, the city may at any time, subject to approval by the comptroller, designate a trust company or bank having its principal place of business in the state of New York and having the powers of a trust company in the state of New York to hold all or any part of the monies in the fund and to administer and maintain the monies so held in accordance with the applicable provisions of this section and any agreements made pursuant thereto.

(o) The mayor of the city is hereby authorized to enter into agreements and to make covenants with any purchaser or holder of obligations issued by the city to protect and safeguard the security and rights of a purchaser or holder or to protect and safeguard the source of payment of such obligations or as deemed appropriate by the mayor which agreements or covenants may contain provisions providing for (i) the compliance by the city with any of the provisions of this section, (ii) restrictions on the issuance by the city of its obligations, limitations on the inclusion of expense items in its capital budgets and financial records, reporting and disclosure requirements in addition to any such restrictions, limitations or requirements contained in this section, (iii) compliance by the city with its financial plan as modified from time to time, (iv) conditions that would give rise to an event of default on such obligations, and (v) remedies available to a purchaser or holder of such obligations, other than acceleration or the required elimination or reduction of specific municipal expenditures, including the circumstances, if any, under which a trustee or trustees or a fiscal agent may be appointed or may act as a representative of holders of

obligations issued by the city in connection with an issue or issues of obligations of the city and the rights, powers and duties which may be vested in such trustee, trustees or fiscal agent as such representative. The state of New York hereby pledges and agrees that it will take no action that would impair the power of the city to comply with or to perform any covenant or agreement made pursuant to this paragraph, or any right or remedy of a purchaser or holder to enforce such covenant or agreement; and the city is hereby authorized to include such pledge and agreement in any agreement made pursuant to this paragraph. Nothing contained in this paragraph shall preclude the state from authorizing the city to exercise, or the city from exercising, any power provided by law to seek application of laws then in effect under the bankruptcy provisions of the United States constitution or shall preclude the state from validly exercising its police powers.

§ 2. This act shall take effect immediately.