

# STATE OF NEW YORK

8941

## IN SENATE

April 1, 2024

Introduced by Sen. BORRELLO -- read twice and ordered printed, and when printed to be committed to the Committee on Cities 2

AN ACT relating to the city of Dunkirk fiscal recovery act; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "city of Dunkirk fiscal recovery act".

3 § 2. Definitions. As used in this act, the following words and terms  
4 shall have the following meanings respectively, unless the text shall  
5 indicate another or different meaning or intent:

6 (a) "Budget" means a current operating budget of the city prepared or  
7 adopted pursuant to general, special or local law, being the annual  
8 budget and estimate of expenditures to be made during a fiscal year for  
9 the general support and current expenses of the government of the city  
10 to be paid from taxes or assessments or other current revenues of the  
11 city for such year.

12 (b) "City" means the city of Dunkirk, in the county of Chautauqua.

13 (c) "City treasurer" means the treasurer of the city.

14 (d) "City council" means the city council of the city.

15 (e) "City fiscal affairs officer" means the city fiscal affairs offi-  
16 cer of the city.

17 (f) "City taxes" means and includes all taxes on real property levied  
18 and assessed by the city, based on valuation thereof and shall not mean  
19 any rent, rate, fee, special assessment or other charge based on benefit  
20 or use.

21 (g) "Collecting officer" means the officer empowered to collect and  
22 receive city taxes.

23 (h) "Deficit bonds" means the bonds authorized to be issued by section  
24 three of this act.

25 (i) "Deficit notes" means bond anticipation notes issued in antic-  
26 ipation of the issuance of deficit bonds.

27 (j) "Financial plan" means the three-year financial plan required by  
28 section nine of this act.

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

LBD14973-02-4

(k) "Fiscal year" means the fiscal year of the city.

(l) "Mayor" means the mayor of the city.

(m) "Outstanding", when used with respect to obligations of the city as of any particular date, means all obligations of the city theretofore issued and thereupon being issued except any obligation theretofore paid and discharged or for the payment of the principal of and interest on which money is held by or on behalf of the city, in trust solely and in all events only for the purpose and sufficient to pay in full the principal and redemption premium, if any, of and interest on such obligations.

(n) "Special debt service" means, with respect to a fiscal year, the amounts required for the timely payment of (i) all principal due or becoming due and payable in said year with respect to any serial bonds, tax anticipation notes, capital notes or budget notes of the city, and all principal amortization for said year required by law with respect to bond anticipation notes or other securities of the city, and not specifically mentioned in paragraph (ii) of this subdivision, (ii) all interest due or becoming due and payable in said year with respect to any serial bonds, bond anticipation notes, tax anticipation notes, revenue anticipation notes, capital notes, budget notes or other securities of the city not specifically mentioned herein, and (iii) all sinking fund contributions required in said year with respect to any sinking fund bonds.

(o) "Special debt service fund" means the fund which is held by the state comptroller and is described and provided for in section thirteen of this act.

(p) "State aid" means all aid and incentives for municipalities pursuant to section 54 of the state finance law, any successor type of aid and any new aid appropriated by the state as local government assistance for the benefit of the city.

(q) "State comptroller" means the comptroller of the state, pursuant to their authority to supervise the accounts of any political subdivision of the state.

Unless the context specifically provides otherwise, any terms used in this act such as revenues, expenditures or expenses shall be construed as such term is construed under applicable accounting principles incorporated in the uniform system of accounts prescribed by the state comptroller.

§ 3. Deficit bond and deficit note issuance authorization. The city is hereby authorized to issue bonds, subject to the provisions of this act, on or before December 31, 2025, in an aggregate principal amount not to exceed eighteen million five hundred thousand dollars (\$18,500,000) (exclusive of the costs and expenses incidental to the issuance of the bonds authorized to be issued by this section) for the specific object or purpose of liquidating actual deficits in its general fund, water fund, sewer fund, and the capital projects fund existing at the close of its 2024 fiscal year. In anticipation of the issuance of such bonds, deficit notes are hereby authorized to be issued.

§ 4. Period of probable usefulness established. It is hereby determined that the financing of the deficits described in section three of this act is an object or purpose of the city for which indebtedness may be incurred, the period of probable usefulness of which is hereby determined to be fifteen years, computed from the date of such deficit bonds or from the date of the first deficit notes, whichever date is earlier. Such deficit bonds and deficit notes shall be general obligations of the city, to which the faith and credit of the city is pledged, and the city

1 shall make an annual appropriation sufficient to pay the principal of  
2 and interest on such obligations as the same shall become due.

3 § 5. Certification of deficit. No deficit bonds may be issued unless  
4 and until the state comptroller shall first review and confirm the  
5 existence of the deficits described in section three of this act, as  
6 well as certify the amount of the deficits. As soon as practicable after  
7 the effective date of this act, but in no event prior to the close of  
8 the city's 2024 fiscal year, the city shall prepare a report detailing  
9 the amount and cause of the deficit and submit to the state comptroller  
10 such report, together with the independent audit report for its last  
11 completed fiscal year and such other information as the state comp-  
12 troller may deem necessary. Within thirty days after receiving all  
13 necessary reports and information, the state comptroller shall:

14 (a) perform such reviews as may be necessary;  
15 (b) confirm the existence and certify the amount of the deficits; and  
16 (c) provide notification to the city fiscal affairs officer, the city  
17 treasurer, the mayor and the city council as to the existence and amount  
18 of any such deficits.

19 § 6. Limit on amount of deficit bonds. Deficit bonds may not be issued  
20 in an amount exceeding the amount of such deficits as certified by the  
21 state comptroller. If the city issues deficit notes prior to a determi-  
22 nation by the state comptroller pursuant to section five of this act in  
23 an amount in excess of the amount of such deficits as confirmed by the  
24 state comptroller, the city shall, from funds other than proceeds of  
25 bonds or bond anticipation notes, either redeem such deficit notes in  
26 the amount by which the amount of such deficit notes exceeds the amount  
27 of such deficits as confirmed by the state comptroller or deposit a sum  
28 equal to the amount by which such deficit notes exceed the amount of  
29 such deficits as confirmed by the state comptroller into the special  
30 debt service fund.

31 § 7. Quarterly budget reports and trial balances. For each fiscal year  
32 during the effective period of this act, the city treasurer shall moni-  
33 tor budgets of the city and, for each budget, prepare a quarterly report  
34 of summarized budget data depicting overall trends of actual revenues  
35 and budget expenditures for the entire budget rather than individual  
36 line items. Such reports shall compare revenue estimates and appropri-  
37 ations as set forth in such budget with the actual revenues and expendi-  
38 tures made to date. All quarterly reports shall be accompanied by a  
39 recommendation by the city fiscal affairs officer setting forth any  
40 remedial action necessary to resolve any unfavorable budget variance  
41 including the overestimation of revenues and the underestimation of  
42 appropriations, and shall be completed within thirty days of the end of  
43 each quarter. The city treasurer shall also prepare, as part of such  
44 report, a quarterly trial balance of general ledger accounts. The above  
45 quarterly budgetary reports and quarterly trial balances shall be  
46 prepared in accordance with applicable accounting principles incorpo-  
47 rated in the uniform system of accounts prescribed by the state comp-  
48 troller. These reports shall be submitted to the city fiscal affairs  
49 officer, the mayor, the city council, the state director of the budget,  
50 the state comptroller, the chair of the assembly ways and means commit-  
51 tee, and the chair of the senate finance committee.

52 § 8. Budget review by state comptroller. During the effective period  
53 of this act, the city fiscal affairs officer shall submit the proposed  
54 budget for the next succeeding fiscal year to the state comptroller no  
55 later than thirty days before the date scheduled for the city council's  
56 vote on the adoption of the final budget or the last date on which the

1 budget may be finally adopted, whichever is sooner. The state comp-  
2 troller shall examine such proposed budget and make such recommendations  
3 as deemed appropriate thereon to the city prior to the adoption of the  
4 budget, but no later than ten days before the date scheduled for the  
5 city council's vote on the adoption of the final budget or the last date  
6 on which the budget must be adopted, whichever is sooner. Such recommen-  
7 dations shall be made after examination into the estimates of revenues  
8 and expenditures of the city. The city council, no later than five days  
9 prior to the adoption of the budget, shall review any such recommenda-  
10 tions and make adjustments to the proposed budget consistent with any  
11 recommendations made by the state comptroller.

12 § 9. Multiyear financial plans. During the effective period of this  
13 act, the city fiscal affairs officer shall prepare, along with the  
14 proposed budget for the next succeeding fiscal year, a three-year finan-  
15 cial plan covering the next succeeding fiscal year and the two fiscal  
16 years thereafter. The financial plan shall, at a minimum, contain  
17 projected employment levels, projected annual expenditures for personal  
18 service, fringe benefits, non-personal services and debt service; appro-  
19 priate reserve fund amounts; estimated annual revenues including projec-  
20 tion of property tax rates, the value of the taxable real property and  
21 resulting tax levy, annual growth in sales tax and non-property tax  
22 revenues; and the proposed use of one-time revenue sources. The finan-  
23 cial plan shall also identify actions necessary to achieve and maintain  
24 long-term fiscal stability, including, but not limited to, improved  
25 management practices, initiatives to minimize or reduce operating  
26 expenses, and potential shared services agreements with other munici-  
27 palities. Within thirty days following the adoption by the city council  
28 of the budget for the next succeeding fiscal year and upon the  
29 completion of each quarterly budget report pursuant to section seven of  
30 this act, the city fiscal affairs officer shall update the financial  
31 plan consistent with such adopted budget or such quarterly budget  
32 report. Copies of the financial plan and any update shall be provided to  
33 the city treasurer, the mayor, the city council, the state director of  
34 the budget, the state comptroller, the chair of the assembly ways and  
35 means committee, and the chair of the senate finance committee.

36 § 10. State comptroller to comment on further debt issuance. During  
37 the effective period of this act, the city treasurer shall notify the  
38 state comptroller at least fifteen days prior to the issuance of any  
39 bonds or notes or entering into any installment purchase contract, and  
40 the state comptroller may review and make recommendations regarding the  
41 affordability to the city of any such proposed issuance or contract.

42 § 11. Private sale of bonds authorized. To facilitate the marketing of  
43 (a) deficit bonds, (b) any bonds issued to refund such deficit bonds,  
44 and (c) any other bonds to be issued on or before December 31, 2025, the  
45 city may, notwithstanding any limitation on the private sales of bonds  
46 provided by law and subject to the approval of the state comptroller of  
47 the terms and conditions of such sales:

48 (1) arrange for the underwriting of such bonds at private sale through  
49 negotiated fees or by sale of such bonds to an underwriter; or

50 (2) arrange for the private sale of such bonds through negotiated  
51 agreement, with compensation for such sales to be provided by negotiated  
52 agreement and/or negotiated fee, if required.

53 The cost of such underwriting or private placement shall be deemed to  
54 be a preliminary cost for purposes of section 11.00 of the local finance  
55 law.

§ 12. Exceptions to the local finance law. Except as provided in this act, all proceedings in connection with the issuance of such deficit bonds or deficit notes shall be had and taken in accordance with the provisions of the local finance law, provided, however, that any resolution or resolutions authorizing the issuance of such bonds or bond anticipation notes shall not be subject to (a) any mandatory or permissive referendum, (b) the provisions of section 107.00 of the local finance law with respect to any requirements for a down payment and (c) the provisions of section 10.10 of the local finance law.

§ 13. Special debt service fund. (a) Upon the issuance of any deficit bonds or deficit notes, the city council shall establish and thereafter maintain a special debt service fund with the state comptroller for the purpose of paying the special debt service due or becoming due in subsequent fiscal years. Such special debt service fund shall be discontinued upon the expiration of the effectiveness of this act, and any balance remaining in the special debt service fund at that time shall be paid by the state comptroller to the city treasurer for use by the city in the manner provided by law.

(b) The state comptroller shall deposit and pay into the special debt service fund any portion of state aid as the state comptroller determines necessary to ensure sufficient moneys are available to make scheduled special debt service payments from the special debt service fund over the succeeding twelve month period taking account of the city's receipt of city taxes and state aid during such twelve month period and the availability of other amounts appropriated or set aside by the city to make such payments. Thereafter, the state comptroller shall, as soon as practicable, pay over the remainder of any such state aid to the city treasurer for use by the city in the manner provided by law.

(c) Not later than the first day of each fiscal year beginning after issuance of any deficit bonds or deficit notes, the city treasurer shall certify to the state comptroller the percentage obtained by dividing the balance obtained by subtracting the amount of the appropriation for such year for a reserve for uncollected taxes from the total amount of city taxes levied and assessed for such year, into the total appropriation in the budget of such year for special debt service, and the percentage so certified shall constitute the debt service percentage for such fiscal year. Immediately upon receipt of any payment during such fiscal year of or on account of any city taxes, the city, its collecting officer and any agent receiving the same shall remit such payment to the state comptroller. Of each sum so received, the state comptroller shall deposit and pay into the special debt service fund the portion thereof equal to the debt service percentage of the total sum, and shall deposit and pay into the fund such additional amounts as the state comptroller determines necessary to ensure sufficient moneys are available to make scheduled special debt service payments from the special debt service fund over the succeeding twelve month period taking account of the timing of the city's receipt of city taxes and state aid during such twelve month period and the availability of other amounts appropriated or set aside by the city to make such payments. Thereafter, the state comptroller shall, as soon as practicable, pay over the remainder of such sum to the city treasurer for use by the city in the manner provided by law.

(d) The moneys in the special debt service fund shall be invested in the manner provided by section 11 of the general municipal law, provided, however, that the investments shall be made for and on behalf of the city by the state comptroller upon instructions from the chief fiscal officer of the city which shall be consistent with the city's

1 investment policy adopted pursuant to section 39 of the general munici-  
2 pal law.

3 (e) The state comptroller shall from time to time during each fiscal  
4 year withdraw from the special debt service fund all amounts required  
5 for the payment as the same becomes due of all special debt service of  
6 such fiscal year and cause the amounts so withdrawn to be applied to  
7 such payments as and when due.

8 (f) The special debt service fund and all monies or securities therein  
9 or payable thereto in accordance with this section is hereby declared to  
10 be city property devoted to essential governmental purposes and accord-  
11 ingly, shall not be applied to any purpose other than as provided herein  
12 and shall not be subject to any order, judgment, lien, execution,  
13 attachment, setoff or counterclaim by any creditor of the city other  
14 than a creditor for whose benefit such fund is established and main-  
15 tained and entitled thereto under and pursuant to this act.

16 § 14. Agreement with the state. (a) The state does hereby pledge to  
17 and agree with the holders of any bonds, notes or other obligations  
18 issued by the city during the effective period of this act and secured  
19 by such a pledge that the state will not limit, alter or impair the  
20 rights hereby vested in the city to fulfill the terms of any agreements  
21 made with such holders pursuant to this act, or in any way impair the  
22 rights and remedies of such holders or the security for such bonds,  
23 notes or other obligations until such bonds, notes or other obligations  
24 together with the interest thereon and all costs and expenses in  
25 connection with any action or proceeding by or on behalf of such hold-  
26 ers, are fully paid and discharged. The city is authorized to include  
27 this pledge and agreement of the state in any agreement with the holders  
28 of such bonds, notes or other obligations. Nothing contained in this act  
29 shall be deemed to (i) obligate the state to make any payments or impose  
30 any taxes to satisfy the debt service obligations of the city, (ii)  
31 restrict any right of the state to amend, modify, repeal or otherwise  
32 alter (A) section 54 of the state finance law or any other provision  
33 relating to state aid, or (B) statutes imposing or relating to taxes or  
34 fees, or appropriations relating thereto, or (iii) create a debt of the  
35 state within the meaning of any constitutional or statutory provisions.  
36 The city shall not include in any resolution, contract or agreement with  
37 holders of such bonds, notes or other obligations any provision which  
38 provides that an event of default occurs as a result of the state exer-  
39 cising its rights described in paragraph (ii) of this subdivision.

40 (b) Any provision with respect to state aid shall be deemed executory  
41 only to the extent of moneys available, and no liability shall be  
42 incurred by the state beyond the moneys available for that purpose, and  
43 any such payment by the state comptroller of state aid shall be subject  
44 to annual appropriation of state aid by the state legislature.

45 § 15. Rights of the state comptroller and bondholders. (a) In the  
46 event that the city shall fail to comply with any provision of this act,  
47 and such non-compliance shall continue for a period of 30 days, (1) the  
48 state comptroller acting alone, or (2) a duly appointed representative  
49 of the holders of at least 25 per centum in aggregate principal amount  
50 of (i) any series of deficit bonds or deficit notes, (ii) any series of  
51 bonds issued to refund such deficit bonds or deficit notes, or (iii) any  
52 other series of notes or bonds issued by the city during the effective  
53 period of this act, by instrument or instruments filed in the office of  
54 the clerk of Chautauqua county and proved or acknowledged in the same  
55 manner as a deed to be recorded, may bring an action or commence a  
56 proceeding in accordance with the civil practice law and rules to (A)

1 require the city to carry out any of its obligations under this act or  
2 (B) enjoin any acts or things which may be unlawful or in violation of  
3 the obligations imposed on the city under this act. In addition, the  
4 duly appointed representative of the bondholders of any such series of  
5 notes or bonds may bring an action or commence a proceeding in accord-  
6 ance with the civil practice law and rules to enforce the rights of the  
7 holders of such series of notes or bonds.

8 (b) The supreme court in the county of Chautauqua shall have jurisdic-  
9 tion of any action or proceeding by the state comptroller or the repre-  
10 sentative of such bondholders.

11 § 16. Severability clause. If any clause, sentence, paragraph, section  
12 or part of this act shall be adjudged by any court of competent juris-  
13 diction to be invalid, such judgment shall not affect, impair or invali-  
14 date the remainder thereof, but shall be confined in its operation to  
15 the clause, sentence, paragraph, section or part involved in the contro-  
16 versy in which such judgment shall have been rendered. The provisions of  
17 this act shall be liberally construed to assist the effectuation of the  
18 public purposes furthered hereby.

19 § 17. This act shall take effect immediately; and shall remain in full  
20 force and effect until the fifteenth anniversary of the date of first  
21 issuance of deficit bonds or deficit notes pursuant to this act, when  
22 upon such date the provisions of this act shall be deemed repealed; and  
23 provided, however, that the state comptroller shall notify the legisla-  
24 tive bill drafting commission upon the occurrence of this act in order  
25 that the commission may maintain an accurate and timely effective data  
26 base of the official text of the laws of the state of New York in furth-  
27 erance of effectuating the provisions of section 44 of the legislative  
28 law and section 70-b of the public officers law.