§ 22.10 Sinking fund bonds of municipalities and school districts. a. Any municipality or school district may issue sinking fund bonds for any object or purpose for which serial bonds may be issued.

b. Sinking fund bonds shall mature at a date not later than the expiration of the period of probable usefulness of the object or purpose for which they are authorized to be issued, as computed from the date of such bonds or, if bond anticipation notes shall have been issued in anticipation thereof, from the date of the earliest note or notes so issued; provided, however, that such bonds shall not mature at a date that is later than fifty years from the date of such bonds or, if bond anticipation notes shall have been issued in anticipation thereof, from the date of the earliest note or notes so issued. Sinking fund bonds may be referred to as "term bonds".

c. Sinking fund bonds shall be redeemed through annual contributions to sinking funds established by the municipality or school district issuing such sinking fund bonds. Each annual contribution shall be at least equal to the amount required, if any, to enable the sinking fund to redeem, on the date of the contribution, the same amount of indebtedness as would have been paid and then be payable if such indebtedness had been financed entirely by the issuance of serial bonds, except, if an issue of sinking fund bonds is combined for sale with an issue of serial bonds, for the same object or purpose, then the amount of each such annual contribution shall be at least equal to the amount required, if any, to enable the sinking fund to redeem, on the date of each such annual contribution, (i) the amount which would be required to be paid annually if such indebtedness had been issued entirely as serial bonds, less (ii) the amount of indebtedness, if any, to be paid during such year on the portion of such indebtedness actually issued as serial bonds. There shall be established within a sinking fund established by a municipality or school district an account for the amortization and redemption of each issue of sinking fund bonds issued by such municipality or school district. At the time of the issuance of sinking fund bonds, the municipality or school district issuing such bonds shall establish and deliver to the state comptroller a schedule setting forth the amount required to be on deposit in the account established for the

redemption of such bonds for each year following the year of issuance of such bonds until the year in which all the bonds of such issue are to be redeemed. Each account shall be maintained at or above the amount required to be on deposit pursuant to such schedule less the principal amount of sinking fund bonds acquired pursuant to subparagraph (e) of subdivision four of paragraph d of this section or purchased by or on behalf of the municipality or school district and thereupon cancelled or paid or for payment of which funds have been duly transferred to the fiscal agent of the municipality or school district that issued the bonds redeemable from such account. Not less than fifteen days nor more than thirty days prior to the date on which the annual contribution shall be made, the municipality or school district shall calculate the amount expected to be on deposit in the sinking fund on such date and shall certify such amount to the state comptroller. The municipality or school district shall annually appropriate for deposit in the sinking fund an amount equal to the difference between the amount required to be on deposit in the sinking fund in accordance with the provisions of this paragraph and the amount on deposit therein on the date the annual contribution is to be made.

d. Sinking funds shall be maintained and managed by the state comptroller pursuant to the provisions set forth below:

1. (a) Moneys deposited and retained in each account in the sinking funds to be maintained and managed by the state comptroller shall vest immediately in the state comptroller in trust for the benefit of the holders of the bonds for which such account was established. Payments and transfers from the sinking funds and the accounts therein shall not be subject to appropriation by the legislature. The state comptroller shall have custody of the securities and other assets in the sinking funds; provided, however, that, subject to the rights of the owners of the bonds, the state comptroller may contract with a bank or trust company for the maintenance, management and custody of the sinking funds. Such bank or trust company shall have an office and be authorized to do business in the state and shall maintain a combined capital and surplus of not less than seventy-five million dollars or shall be the wholly-owned subsidiary of a corporation which maintains a combined

capital and surplus of not less than seventy-five million dollars.

(b) In performing his duties hereunder, the state comptroller shall have no obligation to follow the directions of any bondholder or group of bondholders nor to take any action on behalf of the bondholders, including, without limitation, the obligation to take any action against the municipality or the school district for nonpayment of an annual contribution. The state comptroller shall be required to perform only such duties as are set forth in this section and no implied covenants or obligations shall be read into this section. The state comptroller shall not be liable for any error of judgment made in good faith nor for any action taken or omitted to be taken by him in good faith. The state comptroller makes no representations as to the validity or sufficiency of the bonds redeemable with amounts on deposit in the sinking funds, and shall not be accountable for the use or application of the proceeds of such bonds or of any excess in the sinking funds. The municipalities and school districts shall deliver to the state comptroller such certificates and documents as he shall by regulation or otherwise request. A determination made or action taken by the state comptroller under this section shall be final unless it is shown that such determination or action was arbitrary and capricious or an abuse of discretion.

(c) In connection with any claim, demand, suit, or judgment against the state comptroller in connection with the exercise or performance of any of his powers or duties under this section, the state comptroller shall be entitled to representation by private counsel of his choice in any civil judicial proceeding whenever the attorney general determines based upon his investigation and review of the facts and circumstances of the case that representation by the attorney general would be inappropriate. The attorney general shall notify the state comptroller in writing of such determination. The provisions of this subparagraph shall be in addition to and shall not supplant the indemnification or other benefits conferred upon the state comptroller by section seventeen of the public officers law or otherwise, or any further indemnification or other benefits that may be hereafter conferred by any such law. The provisions of this subparagraph shall inure only to the state comptroller, shall not enlarge or diminish the rights of any other party, and shall not impair, limit or modify the rights and obligations

of any insurer under any policy of insurance.

2. As soon as practicable after a municipality or school district on whose behalf the state comptroller is maintaining and managing a sinking fund notifies the state comptroller of its intention to redeem sinking fund bonds redeemable from an account in such sinking fund prior to or at maturity, the state comptroller shall transfer the requested funds in accordance with the instructions of such municipality or school district.

3. Subject to the provisions of subdivision six of this paragraph, the state comptroller shall, as soon as practicable following the request of the municipality or school district, (i) transfer to such municipality or school district any amounts in any account in the sinking fund held on its behalf determined by the municipality or school district and certified by it to the state comptroller to be over and above the amount required to be maintained in such account pursuant to paragraph c of this section or (ii) transfer or credit the excess in one account to another account within a sinking fund established by such municipality or school district. Such request shall not be made more than once in any twelve month period.

4. (a) Moneys in any sinking fund shall be invested in any of the following:

(i) Direct obligations of the United States of America or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

(ii) Certificates of deposit issued by commercial banks or trust companies maintaining their principal place of business in this state which maintain, or the corporations of which they are wholly-owned subsidiaries maintain, a combined capital and surplus of not less than seventy-five million dollars; provided that any such investment in certificates of deposit shall be secured by direct obligations of the United States of America or the state or by obligations the principal of and interest on which are unconditionally guaranteed by the United States of America or the state in a principal amount with a fair market value at least equal at all times to the principal amount at maturity of

such certificates of deposit, and provided further that such collateral securities shall be physically delivered by the bank or trust company issuing the certificate of deposit to the state comptroller or to a bank or trust company designated pursuant to section sixty-five of the state finance law as his agent (which designated bank or trust company shall not be an issuer of certificates of deposit for the purposes of this section) unless such collateral securities are issued in book-entry form, in which case the state comptroller shall take such other action as may be necessary to obtain title to or a perfected security interest in such collateral securities.

(iii) With the consent of the municipality or school district on whose behalf a sinking fund is held, securities of or guaranteed by the state of New York or obligations of political subdivisions and public benefit corporations thereof, other than obligations of such municipality or school district.

(iv) Deposit accounts (other than certificates of deposit) at the banks or trust companies described in subdivision one of this paragraph; provided that the amounts on deposit in such accounts are secured at all times by direct obligations of the United States of America or the state or by obligations the principal of and interest on which are unconditionally guaranteed by the United States of America or the state in an amount with a fair market value at least equal at all times to the amount of such deposits; and provided further that such collateral securities shall be physically delivered for retention to the state comptroller or a bank or trust company designated pursuant to section sixty-five of the state finance law as his agent (which designated bank or trust company shall not be the bank or trust company at which such account is located) unless such collateral securities are issued in book-entry form, in which case the state comptroller shall take such other action as may be necessary to obtain title to or a perfected security interest in such collateral securities.

(b) For purposes of making any investment of amounts pursuant to this section, the state comptroller may consolidate moneys in any sinking fund or account in a sinking fund with moneys in any other sinking fund or account in the same or any other sinking fund and may transfer an interest in an investment from one sinking fund or account to another without liquidating the investment, but only if all such investments are

authorized or consented to for such sinking funds, and all such investments shall be credited on a pro-rata basis to the appropriate sinking funds and accounts. The allocable amount of income or interest earned and gains realized in excess of losses suffered due to the investment of amounts on deposit in any account in a sinking fund shall be deposited upon receipt in such account. All investments made pursuant to this section shall mature or be redeemable at the option of the holder thereof on such dates and in such amounts as may be necessary to pay principal of any sinking fund bonds when due, whether at maturity or by redemption prior to maturity.

(c) Each municipality and school district shall provide the state comptroller with information and opinions of counsel necessary to insure that the municipality or school district complies with any restrictions imposed by applicable federal law on the yield payable on investments in a sinking fund. In order to comply with such yield restrictions, the state comptroller shall, at the direction of the municipality or school district, invest the amounts on deposit in any account of a sinking fund of such municipality or school district in obligations described in clause (iii) of subparagraph (a) of subdivision four of this paragraph, the interest on which is exempt from federal income taxes. The state comptroller is authorized to promulgate rules and regulations as he deems appropriate to implement the provisions of this paragraph.

(d) The state comptroller may engage the services of such consultants and counsel as he may deem necessary to assist in performing the functions required to be performed by him under this section.

(e) The state comptroller shall, at the instruction of any municipality or school district on whose behalf the state comptroller is maintaining and managing a sinking fund, use his best efforts to apply funds in any account within such sinking fund to purchase bonds redeemable from such account.

5. The principal amount of sinking fund bonds required to be redeemed on any date by payment from a sinking fund shall be reduced by the principal amount of any such sinking fund bond which has been purchased or redeemed and cancelled and not theretofore applied as a credit against such requirement.

6. The state comptroller shall be reimbursed annually by March fifteenth of each year for the fees and expenses of custodians of securities in a sinking fund, fees and expenses of custodians of collateral securities for investments in a sinking fund, fees of banks and trust companies designated pursuant to subdivision one of this paragraph, fees and expenses of counsel other than the attorney general, fees and expenses of consultants, direct personnel costs of the department of audit and control and other similar costs and related expenses of maintaining and managing the sinking funds during the year ending the preceding December thirty-first by the municipalities or school districts issuing the bonds redeemable therefrom. Notwithstanding the foregoing, the fees and expenses of consultants retained by the comptroller shall be reimbursed by any such municipality or school district only with its express consent. In the event that the state comptroller shall not have been reimbursed as provided above, then the state comptroller shall deduct the amount of the required reimbursement from any excess on deposit in a sinking fund; provided, however, that in no event shall the state comptroller use assets of the sinking funds other than the excess therein for such reimbursement. The state comptroller may establish such accounts in the state special revenue fund as are necessary to provide for the receipt and disposition of such payments as may be received from municipalities and school districts pursuant to this subdivision; provided that payments and transfers from such accounts shall be made pursuant to an appropriation provided by law.

7. (a) The state comptroller shall adopt such regulations as he deems appropriate to implement the provisions of this section, which may include, but shall not be limited to, regulations establishing:

(A) The rights and responsibilities of the state comptroller in maintaining and managing the sinking funds hereunder, which rights and responsibilities may include, among others, that:

(i) the state comptroller undertakes to perform such duties and only such duties as are specifically set forth in the statute, the regulations or any agreement with the municipality or school district and no implied covenants or obligations shall be read into the statute, the regulations or into any agreement with the municipality or school

district against the state comptroller;

(ii) the state comptroller may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the state comptroller and conforming to the requirements of the statute, the regulations and any agreement with the municipality or school district; but in the case of any such certificates or opinions which are specifically required to be furnished to the state comptroller pursuant to paragraph c of this section, the state comptroller shall be under a duty to examine the contents of the same to determine whether or not they conform to the requirements of the statute, the regulations and any agreement with the municipality or school district;

(iii) the state comptroller shall not be liable for any error of judgment made in good faith by him;

(iv) the state comptroller shall not be liable with respect to any action taken or omitted to be taken by him in good faith in accordance with the direction of the municipality or school district;

(v) the state comptroller may rely, and shall be protected in acting or refraining from acting in reliance, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document believed by him to be genuine and to have been signed or presented by the proper party or parties;

(vi) any request or direction of the municipality or school district shall be sufficiently evidenced by a certificate signed by an authorized official of the municipality or school district and any resolution of the governing body of the municipality or school district may be sufficiently evidenced by a copy of such resolution certified by the appropriate official of the municipality or school district;

(vii) whenever the state comptroller shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action, the state comptroller (unless other evidence be specifically prescribed) may, in the absence of bad faith on his part, rely upon a certificate signed by an authorized official of the municipality or school district;

(viii) the state comptroller may consult with counsel, including the attorney general, and the written advice of such counsel shall be full

and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith and in reliance thereon;

(ix) the state comptroller shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond or other paper or document, but the state comptroller, in his discretion, may make such further inquiry or investigation into such facts or matters as he may see fit, and, if the state comptroller shall determine to make such further inquiry or investigation, he shall be entitled to examine the books, records and premises of the municipality or school district, personally or by agent or attorney;

(B) Procedures for determining the value of investments in the sinking funds and of the collateral securities securing such investments;

(C) Procedures for determining and allocating administrative expenses related to maintaining and managing the sinking funds and the payment thereof;

(D) Procedures for determining the amount of excesses in a sinking fund and when withdrawals of excesses in a sinking fund may occur, for transferring moneys from a sinking fund to redeem sinking fund bonds and for directing the purchase of sinking fund bonds, including the frequency with which such actions may be taken;

(E) The form and substance of reports, certificates and other material to be delivered by the municipality or the school district to the state comptroller;

(F) Standards for the qualification of consultants to the state comptroller;

(G) Procedures for securing amounts on deposit in the sinking funds;

(H) Procedures for distributing the amount on deposit in a sinking fund if such amount is insufficient to pay any bonds when due; and

(I) Procedures for the disposition of a sinking fund upon defeasance of the sinking fund bonds, if defeasance other than by payment or purchase by sinking fund moneys is legally permissible.

(b) Each municipality and school district is authorized to enter into agreements with the state comptroller and the state comptroller is authorized to enter into agreements with one or more municipality or school district setting forth, with respect to the sinking funds and

each account therein, the dates on which annual contributions to such accounts shall be made, the dates on which withdrawals from such accounts may be made, the dates on which excesses in such accounts shall be calculated, any limitations on the price to be paid for the purchase of bonds pursuant to subparagraph (e) of subdivision four of this paragraph and such other matters as the state comptroller and the municipality or school district shall deem appropriate. Such agreements shall be subject to approval only by the chief fiscal officer and the finance board of the municipality or school district.

8. Nothing in this section shall be construed to prevent or apply to the issuance of sinking fund bonds by the city of New York pursuant to the authorization contained in section 22.00 of this chapter; provided, however, that in the event the city of New York issues sinking fund bonds pursuant to the authorization contained in this section, all of the provisions of this section shall apply.

9. Failure to comply with any provision of this section shall not affect the validity of any sinking fund bonds.

10. The comptroller shall annually prepare a report with respect to the maintenance and management of sinking funds authorized by this section. Such report, with respect to each municipality and school district issuing sinking fund bonds pursuant to this section, shall include, but not be limited to, a summary statement of the cash and bonds invested in sinking funds, earnings thereon and disbursements therefrom, and fees charged including information pertaining to the allocation of the costs of the department of audit and control of managing and maintaining such funds. Such report may also include any other matter which the comptroller deems advisable. Such report shall be delivered not later than May thirtieth to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee, the chairman of the assembly ways and means committee and the chief fiscal officer of each such municipality and school district.