§ 90.10 Advance refunding of certain bonds. a. As used in this section:

1. The term "escrow contract" shall mean a contract entered into by and between a municipality, school district or district corporation and a bank or trust company pursuant to paragraph i of this section.

2. The term "escrow holder" shall mean the bank or trust company designated as such pursuant to an escrow contract.

3. The term "refunding financial plan" shall mean the financial plan for a refunding as set forth in the refunding bond resolution relating thereto.

4. The term "refunding bonds" shall mean refunding bonds authorized pursuant to this section.

5. The term "refunding bond resolution" shall mean a resolution authorizing the issuance of refunding bonds adopted pursuant to paragraph e of this section.

b. 1. A municipality, school district or district corporation may issue serial bonds to refund all or any portion of an issue of outstanding serial bonds issued on or after January first, nineteen hundred seventy, and, in addition, a municipality or school district may issue serial bonds or serial bonds to refund all or any portion of an issue of outstanding sinking fund bonds or sinking fund bonds issued on or after December fifteenth, nineteen hundred eighty-one and may issue sinking fund bonds to refund all or any portion of an issue of outstanding serial bonds or sinking fund bonds, in the manner and subject to the limitations and conditions set forth in this section. The principal amount of refunding bonds shall not exceed an amount sufficient to pay the sum of (a) the principal amount of the bonds to be refunded, which is outstanding as of the date of issue of the refunding bonds, (b) the aggregate amount of unmatured interest payable on the bonds to be refunded to and including either the date or dates such bonds mature or, if such bonds are to be called for redemption prior to

their maturities, the date or dates set for such redemption in accordance with the refunding financial plan, (c) redemption premiums, if any, payable on the bonds to be refunded as of such redemption date or dates, and (d) costs and expenses incidental to the issuance of the refunding bonds, including the development of the refunding financial plan, and of executing and performing the terms and conditions of the escrow contract and all fees and charges of the escrow holder. In the event a municipality or school district issues bonds to refund sinking fund bonds, and such refunding has the effect of permitting the municipality or school district to withdraw assets from a sinking fund established for such refunded bonds, then such assets shall be used to pay principal and interest on either such refunded bonds or other bonds of such municipality or school district.

2. * (a) Refunding bonds shall be issued only in the event that the present value of the total payments of both principal and interest to become due on the refunding bonds, and deducting any accrued interest or premium received by the issuer and not used to pay the principal of or interest on the bonds to be refunded or costs of issuance of the refunding bonds, excluding all such principal and interest payments to be made from income received as a result of the investment of the proceeds from the sale of the refunding bonds, shall be less than the present value of the principal and interest payments to become due at their stated maturities on the principal amount of bonds to be refunded which are outstanding as of the date of the issue of the refunding bonds after deducting therefrom all costs and expenses incidental to the issuance of the refunding bonds, including the development of the refunding financial plan, and of executing and performing the terms and conditions of the escrow contract and all fees and charges of the escrow holder, but only to the extent such costs and expenses are not paid from the proceeds of the refunding bonds. The present value of debt service payments pursuant to the foregoing provisions of this subdivision shall be computed by discounting the principal and interest payments on both the refunding bonds and the bonds to be refunded from the respective maturities thereof to the date of issue of the refunding bonds at a rate equal to the effective interest cost of the refunding bonds. The effective interest cost of the refunding bonds shall be that rate which

is arrived at by doubling the semi-annual interest rate (compounded semi-annually) necessary to discount the debt service payments on the refunding bonds from the maturity dates thereof to the date of issue of the refunding bonds and to the bona fide initial public offering price including estimated accrued interest, or, if there is no public offering, to the price bid including estimated accrued interest. In the case of the city of New York, notwithstanding any other provision of law to the contrary, for purposes of calculating the present value of debt service and calculating savings in connection with the issuance of refunding bonds, (i) the effective interest rate and debt service payable on variable rate bonds in connection with which, and to the extent that, the city of New York has entered into an interest rate exchange or similar agreement pursuant to which such city makes payments based on a fixed rate and receives payments based on a variable rate that shall be found by the finance board of such city to be equivalent over time to the variable rate paid on the related variable rate bonds, shall be calculated assuming that the rate of interest on such variable rate bonds is the fixed rate payable by such city on such interest rate exchange or similar agreement for the scheduled term of such agreement; (ii) the effective interest rate and debt service on variable rate bonds in connection with which, and to the extent that, the city of New York has not entered into such an interest rate exchange or similar agreement shall be calculated assuming that interest on such variable interest rate bonds is payable at a rate or rates as shall be found by the finance board of such city; (iii) the effective interest rate and debt service on any bonds subject to optional or mandatory tender shall be calculated assuming that such bonds are remarketed following any such tender at a rate or rates as shall be found by the finance board of the city of New York; and (iv) otherwise, the effective interest rate and debt service on any bonds shall be calculated at a rate or rates determined by the finance board of the city of New York. Notwithstanding any other provision of law to the contrary, in the case of the city of New York, for calculating the present value of debt service and calculating savings in connection with the issuance of refunding bonds, the refunding of variable rate debt instruments with new variable rate debt instruments shall be excluded from any such requirements, if so determined by the finance board of such city.

* NB Effective until July 15, 2027

* (a) Refunding bonds shall be issued only in the event that the present value of the total payments of both principal and interest to become due on the refunding bonds, and deducting any accrued interest or premium received by the issuer and not used to pay the principal of or interest on the bonds to be refunded or costs of issuance of the refunding bonds, excluding all such principal and interest payments to be made from income received as a result of the investment of the proceeds from the sale of the refunding bonds, shall be less than the present value of the principal and interest payments to become due at their stated maturities on the principal amount of bonds to be refunded which are outstanding as of the date of the issue of the refunding bonds after deducting therefrom all costs and expenses incidental to the issuance of the refunding bonds, including the development of the refunding financial plan, and of executing and performing the terms and conditions of the escrow contract and all fees and charges of the escrow holder, but only to the extent such costs and expenses are not paid from the proceeds of the refunding bonds. The present value of debt service payments pursuant to the foregoing provisions of this subdivision shall be computed by discounting the principal and interest payments on both the refunding bonds and the bonds to be refunded from the respective maturities thereof to the date of issue of the refunding bonds at a rate equal to the effective interest cost of the refunding bonds. The effective interest cost of the refunding bonds shall be that rate which is arrived at by doubling the semi-annual interest rate (compounded semi-annually) necessary to discount the debt service payments on the refunding bonds from the maturity dates thereof to the date of issue of the refunding bonds and to the bona fide initial public offering price including estimated accrued interest, or, if there is no public offering, to the price bid including estimated accrued interest.

* NB Effective July 15, 2027

(b) Notwithstanding the provisions of subparagraph (a) of this subdivision, the city of New York may also issue refunding bonds (i) if the bond to be refunded contains a covenant referring to the existence of the New York state emergency financial control board for the city of New York or any other covenant relating to matters other than the prompt payment of principal and interest on the obligation when due, and the

refunding bond omits or modifies any such covenant or (ii) if the bond to be refunded is guaranteed by the federal government.

(c) Notwithstanding the provisions of subparagraph (a) of this subdivision, in the case of refunding bonds sold to the New York state environmental facilities corporation and purchased for deposit in the water pollution control revolving fund established pursuant to section twelve hundred eighty-five-j of the public authorities law and for which an allocation has been established pursuant to section 17-1909 of the environmental conservation law, the present value of the projected total allocation payable to the issuer of the refunding bonds or available to make principal and interest payments on the refunding bonds shall be subtracted from the present value of the total payments of the principal and interest to become due on the refunding bonds in determining the present value savings attributable to the issuance of such refunding bonds pursuant to subparagraph (a) of this subdivision.

(d) Notwithstanding the provisions of subparagraph (a) of this subdivision, in the case of refunding bonds sold to the New York state environmental facilities corporation and purchased for deposit in the drinking water revolving fund established pursuant to section twelve hundred eighty-five-m of the public authorities law and for which an allocation has been established pursuant to section eleven hundred sixty-two of the public health law, the present value of the projected total allocation payable to the issuer of the refunding bonds or available to make principal and interest payments on the refunding bonds shall be subtracted from the present value of the total payments of the principal and interest to become due on the refunding bonds in determining the present value savings attributable to the issuance of such refunding bonds pursuant to subparagraph (a) of this subdivision.

(e) Notwithstanding the provisions of subparagraph (a) of this subdivision, a school district may also issue refunding bonds to refund bonds if the bonds were issued by a school district prior to December first two thousand one, or prior to thirty days after the effective date of this subdivision, whichever is later, for the purpose of financing facilities that were eligible for building aid pursuant to subdivision six of section thirty-six hundred two of the education law, and for which the aid apportionment payable in the two thousand two--two thousand three and two thousand three--two thousand four school years

for approved expenditures for debt service are subsequently reduced as a result of the application of assumed amortization to unpaid principal outstanding as of July first, two thousand two.

3. Refunding bonds may be issued at any time subsequent to the issuance of the bonds to be refunded.

c. 1. The last installment of each separate series of refunding serial bonds, and the maturity date of any refunding sinking fund bonds, shall occur not later than the expiration of the maximum period of probable usefulness permitted by law at the time of the issuance of the refunding bonds or the bonds to be refunded for the object or purpose for which such bonds to be refunded were issued, or in the alternative, the weighted average remaining period of probable usefulness of the objects or purposes (or classes of objects or purposes) financed with each series of bonds to be refunded or the weighted average remaining period of probable usefulness of all objects or purposes (or classes of objects or purposes) financed with all of the bonds to be refunded. Such period shall be computed from the date of issuance of such bonds to be refunded or from the date of the first bond anticipation note issued in anticipation thereof, whichever date is the earlier.

2. The first installment of each separate series of refunding bonds shall mature not later than the date of the first stated maturity of the bonds to be refunded next following the date of issue of the refunding bonds. When the finance board has determined to provide for a substantially level or declining annual debt service schedule for the refunding bonds, as provided in subdivision three of this paragraph, the determination of whether annual debt service is substantially level or declining shall not take into account the year which includes the first principal installment of the refunding bonds, provided that the first principal installment, when added to the amount of interest payable within one year of its accrual that would accrue on the entire refunding debt or series of refunding bonds in one calendar year, shall be no more than five percent less than the greatest aggregate amount of debt service due in any other year.

3. No annual installment of each separate series of refunding bonds shall be more than fifty per centum in excess of the smallest prior installment unless the finance board of the municipality, school district or district corporation issuing the bonds has determined to use a substantially level or declining annual debt service schedule for the refunding bonds. The amounts of annual installments of the refunding bonds may be determined without reference to the stated maturities of the bonds to be refunded.

4. In the event the bonds to be refunded were separately authorized for different objects or purposes, which separately authorized bonds were consolidated for purposes of sale and sold as a single issue pursuant to paragraph c of section 57.00 of this chapter, each component issue included in such consolidated issue shall be considered as a separate issue for the purposes of the provisions of subdivisions one, two and four of this paragraph, notwithstanding that the refunding bonds are sold as a single issue.

5. Refunding bonds may be issued as two or more separate series.

d. Bond anticipation notes shall not be issued in anticipation of the sale of refunding bonds.

e. The issuance of refunding bonds shall be authorized by a "refunding bond resolution". Such a resolution shall contain, in substance, at least the following:

1. The maximum amount of refunding bonds authorized to be issued pursuant thereto.

2. A determination that such maximum amount of refunding bonds authorized to be issued does not exceed the limitation imposed by subdivision one of paragraph b of this section.

3. The amount and a description of the outstanding bonds to be refunded.

4. A statement of the maximum period or periods of probable usefulness permitted by law at the time of the issuance of the bonds to be refunded for the object or purpose or objects or purposes for which such bonds to be refunded were issued.

5. The financial plan for the refunding proposed, showing the sources and amounts of all moneys required to accomplish such refunding, and except where such refunding bonds are issued by the city of New York pursuant to subparagraph (b) of subdivision two of paragraph b of this section an estimate of the present value of the total debt service savings anticipated, computed in accordance with subparagraph (a) of subdivision two of paragraph b of this section.

f. 1. Any refunding bonds issued to refund bonds which are additionally secured by a pledge of any specific moneys pursuant to any general or special law, at the option of the finance board, may be additionally secured to the same extent and in the same manner as the bonds to be refunded effective upon the date of issue of such refunding bonds, subject only to any rights of the holders of such bonds to be refunded.

2. Refunding bonds may be sold at either public or private sale, but they shall not be sold on option or on a deferred payment plan, provided, however, that if such bonds are sold at private sale, the terms and conditions of such sale shall be approved by the state comptroller. Refunding bonds sold at private sale shall bear interest at such rate or rates, not exceeding the maximum rate, if any, fixed by paragraph b of section 57.00 of this chapter, as may be determined by the finance board. Refunding bonds may be sold at private sale at a discount in the same manner as authorized by paragraph e of section 57.00 of this chapter. The cost of such discount, together with other costs of the issuance of obligations, shall be deemed a part of the cost of the objects or purposes for which such obligations are issued.

g. Except where such refunding bonds are issued by the city of New York pursuant to subparagraph (b) of subdivision two of paragraph b of this section, no refunding bonds shall be issued pursuant to this

section unless the chief fiscal officer of the issuer shall have first filed with the finance board a certificate, approved by the state comptroller, which shall be final and conclusive upon all parties, setting forth the present value of the total debt service savings to the issuer resulting from the issuance of the refunding bonds computed in accordance with the provisions of subparagraph (a) of subdivision two of paragraph b of this section, except that the actual amount, rather than an estimate, of the amount of accrued interest to be paid on such bonds shall be used in determining the effective interest cost thereof. The certificate shall be in the form and shall contain such information as shall be prescribed by the state comptroller. The certificate shall not be approved until ten days after the filing of such certificate in the office of the state comptroller.

h. 1. Prior to the issuance of refunding bonds, the finance board shall adopt a resolution electing to call in and redeem such portion of the bonds to be refunded as is to be called for payment prior to the date of their maturity in accordance with the refunding financial plan. The resolution adopted pursuant to this paragraph shall authorize and direct the escrow holder to cause notice of such call for redemption to be given in the name of the issuer of such refunding bonds in the manner and within the times provided by paragraph a of section 53.00 of this chapter. If the issuer has no official newspaper, such resolution shall designate a newspaper having general circulation within the municipality, school district or district corporation for the purpose of giving such notice.

2. Upon the issuance of the refunding bonds, the election to call in and redeem the bonds to be refunded and the direction to the escrow holder to cause notice thereof to be given contained in the resolution adopted pursuant to subdivision one of this paragraph, shall become irrevocable, and the provisions of such resolution shall constitute a covenant with the holders of such refunding bonds, provided that such resolution may be amended from time to time as may be necessary in order to comply with the publication requirements of paragraph a of section 53.00 of this chapter.

i. 1. The finance board, or the chief fiscal officer if the finance board shall delegate such duty to him, prior to the issuance of refunding bonds, shall contract on behalf of the issuer with a bank or trust company located and authorized to do business in this state for the purpose of having such bank or trust company act as the escrow holder of the proceeds, inclusive of any premium, from the sale of such refunding bonds, together with all income derived from the investment of such proceeds, and any other moneys to be provided by such issuer to effectuate the refunding financial plan. Each escrow contract shall contain such terms and conditions as shall be necessary in order to accomplish the refunding financial plan, including, without limiting the generality of the foregoing, provisions for the escrow holder without further authorization or direction from the issuer of the refunding bonds, except as otherwise provided therein, (a) to make all required payments of principal, interest and redemption premiums to the appropriate paying agent with respect to either the bonds to be refunded or the refunding bonds, (b) to pay costs and expenses incidental to the issuance of the refunding bonds, including the development of the refunding financial plan, and of executing and performing the terms and conditions of the escrow contract and all of its fees and charges as the escrow holder, (c) at the appropriate time or times to cause to be given on behalf of such issuer the notice of redemption authorized to be given pursuant to paragraph h of this section, and (d) to invest the moneys held by it consistent with the provisions of the refunding financial plan. Each escrow contract shall be irrevocable and shall constitute a covenant with the holders of the refunding bonds to which it relates.

2. The proceeds, inclusive of any premium, from the sale of refunding bonds, immediately upon receipt, shall be placed in escrow by the issuer with the escrow holder in accordance with the escrow contract. All moneys held by the escrow holder shall be invested only in direct obligations of the United States of America or in obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, which obligations shall mature or be subject to redemption at the option of the holder thereof not later than the respective dates when such moneys will be required to make payments in accordance with the refunding financial plan. Any such moneys remaining

in the custody of the escrow holder after the full execution of the escrow contract shall be returned to the issuer of the refunding bonds and shall be applied by such issuer to the payment of the principal of or interest on the refunding bonds then outstanding, to the payment of any amounts required to be paid to the United States of America in connection with the refunding or to the payment of or reimbursement for the costs of issuance or other administrative costs incurred in connection with the issuance of the refunding bonds.

3. That portion of such proceeds from the sale of refunding bonds, together with interest earned thereon and any moneys on deposit in a sinking fund established for the refunded bonds which is applied to the payment of the principal and interest on the refunded bonds pursuant to subdivision one of paragraph b of this section, which shall be required for the payment of the principal of and interest on the bonds to be refunded, including any redemption premiums, in accordance with the refunding financial plan, shall be irrevocably committed and pledged to such purpose and the holders of such bonds to be refunded shall have a lien upon such moneys and the investments thereof held by the escrow holder. All interest earned from the investment of such moneys not required for such payments on the bonds to be refunded, shall be irrevocably committed and pledged to the payment of the principal of and interest on the refunding bonds, or such portion or series thereof as shall be required by the refunding financial plan, and the holders of such refunding bonds shall have a lien upon such moneys held by the escrow holder. The pledges and liens provided for in this subdivision shall become valid and binding upon the issuance of the refunding bonds and the moneys and investments held by the escrow holder shall immediately be subject thereto without any further act. Such pledges and liens shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the issuer of the refunding bonds irrespective of whether such parties have notice thereof. Neither the refunding bond resolution, the escrow contract, nor any other instrument relating to such pledges and liens, need be filed or recorded.

j. The powers granted by this section to issue refunding bonds shall

be deemed to be in addition to the provisions of section 90.00 of this chapter, but none of the provisions of section 90.00 shall apply to any refunding bonds issued pursuant to this section. All other provisions of this chapter, not inconsistent with this section, relating to the authorization, estoppel from contesting validity, form and contents, execution and issuance of bonds, other than refunding bonds, shall apply to refunding bonds, except that:

1. The provisions of section 107.00 of this chapter shall not apply to the issuance of refunding bonds.

2. The authorization of the issuance of refunding bonds shall not be subject to a mandatory or permissive referendum.

3. Outstanding bonds may, with the consent of the holders thereof, be exchanged for refunding bonds (i) if the refunding bonds are to bear interest at a rate equal to or lower than that borne by the bonds to be refunded, or (ii) if, in the case of the city of New York, the annual payment required for principal and interest on the refunding bond is less than the annual payment required for principal and interest on the bond to be refunded, in each case such annual payments to be determined by dividing the total principal and interest payments due over the remaining life of the bond by the number of years to maturity of the bond, or (iii) if, in the case of the city of New York, the bond to be refunded contains a covenant referring to the existence of the New York state emergency financial control board for the city of New York or any other covenant relating to matters other than the prompt payment of principal and interest on the obligation when due, and the refunding bond omits or modifies any such covenant, or (iv) if, in the case of the city of New York, the bond to be refunded is guaranteed by the federal government.

4. All refunding bonds shall contain a recital that they are issued pursuant to this chapter, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

k. The authority herein granted to authorize the issuance of refunding

bonds shall in no way be affected by the invalidity of or any irregularity in any proceedings authorizing the issuance of the bonds to be refunded, except that refunding bonds shall not be issued to refund bonds adjudged invalid by the final judgment of a court of competent jurisdiction.