*** § 3038. Conditions on extension of benefits to the city.** The corporation shall, at the time of any exchange of the corporation's bonds and notes for short-term obligations of the city pursuant to subdivision two of section three thousand thirty-five of this chapter or any payment of funds of the corporation to the city or of any purchase from the city of its obligations pursuant to section three thousand thirty-seven of this chapter, require the city to agree to observe and perform the conditions set forth below in this section, with such limitations as to the implementation of such conditions as the corporation may, subject to any contract with bondholders or noteholders, then approve; provided, however, that no such specific limitations shall be so substantial as to effectively constitute a waiver of any such conditions. Any such conditions may thereafter, in the discretion of the corporation, subject to any contract with bondholders or noteholders, be further limited. Such conditions shall cease to apply when all notes and bonds have been repaid or when the corporation has accumulated in its capital reserve funds or otherwise an amount equal to the principal of all outstanding notes and bonds and interest accrued thereon. The city shall have the right at any time to pay the corporation an amount which, when added to the capital reserve funds, shall equal the principal of all outstanding notes and bonds and interest accrued thereon and redemption premium if any. If the city makes such payment at a time when the corporation has outstanding notes or bonds that are not then callable, the city shall agree to pay the corporation on demand an amount equal to the amount, if any, by which the amount of interest on such notes or bonds shall exceed the corporation's income from the investment of its funds. Subject to the foregoing, the conditions that the corporation shall require the city to observe and perform shall be as follows:

1. The city shall deliver a certificate, executed by the mayor and the city comptroller in form prescribed by the corporation, (a) representing that the city is in compliance with the conditions described below in this section as the corporation may specify, (b) undertaking to comply with any of such specified conditions as the corporation may then require and (c) stating that all local legislative and executive action then required to permit such compliance by the city has been taken. The

corporation may require the delivery with such certificate of an opinion of the city's corporation counsel that all such legislative and executive action has been taken.

2. (a) The city shall, within ninety days after the first such agreement, initiate steps to adopt as the city's method of accounting for purposes of reporting to the corporation with respect to the city's financial condition and compliance with the conditions of this section, the accounting principles set forth in the state comptroller's uniform system of accounts for municipalities, as the same may be modified by the state comptroller, in consultation with the city comptroller, for application to the city. The city shall complete the transition to such accounting method as promptly as reasonably practicable thereafter and, in any event, so that the audited financial statements for the fiscal year ending June thirtieth, nineteen hundred seventy-eight shall be prepared in accordance with such accounting methods, except as provided below in this subdivision. It is recognized that the adoption of such accounting principles may result in substantial adjustments from the accounting principles now followed by the city. The corporation and the city shall consult, over the course of the introduction and adoption of such accounting system and the accounting methods referred to in section eight of the New York state financial emergency act for the city of New York, and until the expiration of the fiscal year ending June thirtieth, nineteen hundred seventy-eight, the corporation and the city may formulate a mutually acceptable method of phasing such adjustments into the accounting system described in this paragraph over such reasonable period, not exceeding ten years, as the corporation may determine to be appropriate and the financial statements and other information to be furnished to the corporation may, notwithstanding any other provision of this section three thousand thirty-eight be prepared in accordance with such determination.

(b) For the fiscal year ending June thirtieth, nineteen hundred seventy-nine, and for each fiscal year thereafter, the city's expense budget shall be prepared in accordance with the provisions of section eight of the New York state financial emergency act for the city of New York.

3. The city shall take such action as may be necessary to enable the state comptroller, or at his election an independent certified public accounting firm retained by the city but satisfactory to the state comptroller, to perform an annual audit and to furnish to the corporation an annual report, for the fiscal year ending June thirtieth, nineteen hundred seventy-eight upon the financial statements of the city. For each subsequent fiscal year the city shall take such action as may be necessary to enable a nationally recognized independent certified public accounting firm selected and retained by the city at its cost in accordance with the provisions of section seven-a of the New York state financial emergency act for the city of New York to perform an annual audit and to furnish to the corporation an annual report upon the financial statements of the city. Each such report shall be prepared in accordance with the accounting method prescribed under subdivision two of this section. The city shall make available for inspection and copying all books, records, work papers and other data and material as required by the state comptroller or the independent certified public accounting firm conducting such audit and the city shall make its officers and employees available to and shall cooperate with such auditors so as to permit such annual audit to be completed and the report issued to the city and to the corporation within one hundred twenty days after the close of the fiscal year. Such report shall be made available to the public promptly thereafter.

4. Beginning with the fiscal year ending June thirtieth, nineteen hundred seventy-seven and for each fiscal year thereafter, the city shall deliver a proposed expense budget to the corporation. Delivery to the corporation shall be made concurrently with the initial submission of the proposed expense budget to the board of estimate and the city council, but in any event not later than fifty days prior to the beginning of such fiscal year or such other date as the corporation may approve upon the request of the city. Beginning with the fiscal year ending June thirtieth, nineteen hundred seventy-eight, and for each fiscal year thereafter, the proposed expense budget submitted to the corporation shall be prepared in accordance with the accounting methods referred to in subdivision two of this section. Such budget shall be identical to the proposed expense budget submitted to the board of

estimate and city council. The proposed expense budget delivered to the corporation shall be accompanied by (i) a statement setting forth in detail the assumptions of income and expense used in its preparation, (ii) for the fiscal year ending June thirtieth, nineteen hundred seventy-eight, a reconciliation of the differences, if any, between such proposed expense budget and the proposed expense budget based on the applicable accounting methods set forth in subdivision two a of this section but without adjustments or modifications permitted by this title, and for each subsequent fiscal year a reconciliation between such proposed expense budget and the proposed budget based on the principles described in section eight of the New York state financial emergency act for the city of New York, and (iii) a certificate of the mayor stating that such assumptions are reasonable and that operation within the budget is feasible and explaining the reasons for any differences therein from the proposed expense budget described in clause (ii) above. Subject to and in accordance with the provisions of section eight of the New York state financial emergency act for the city of the New York, as the same may be amended from time to time, the city shall in every fiscal year adopt and maintain an expense budget in which the total of all income items equals or exceeds the total of all expenditure items. For the fiscal year ending June thirtieth, nineteen hundred seventy-eight and each subsequent fiscal year the total of all income items shall also equal or exceed the total of all expenditure items in each expense budget as adopted by the city, after the adjustments, if any, required to conform to the accounting methods referred to in subdivision two of this section (except as may be modified by the application of subdivision five of this section) and the city shall also maintain a budget balanced in accordance with such accounting principles. Prior to July first, nineteen hundred eighty-two and notwithstanding any other provision of this section to the contrary, any expense item in the expense budget for any fiscal year, which item relates to contributions by the city or other public employer to any retirement system or pension fund, shall include only the amounts which, under the provisions of law, rules or regulations expressly prescribing the method of determining employer contributions to such retirement system or pension fund and the time of payment thereof, are due and payable in such fiscal year, and no such expense item shall include

amounts for any such contribution which, under such laws, rules or regulations, do not become due and payable in such fiscal year.

5. The city shall, over a period of six fiscal years, beginning with its fiscal year ending June thirtieth, nineteen hundred seventy-seven, eliminate from its capital budget those expenses that are properly includable only in its expense budget, as determined in accordance with the accounting principles set forth in the state comptroller's uniform system of accounts for municipalities, as the same may be modified by the state comptroller, in consultation with the city comptroller, for application to the city. The determination of which items are properly includable only in the city's expense budget shall be made in accordance with the aforesaid accounting principles regardless of any act of the legislature prior or subsequent to the effective date of this title otherwise classifying such items. To implement the foregoing:

(a) The mayor and the city comptroller shall, not later than October thirty-first, nineteen hundred seventy-five, certify to the corporation, a list, to the best of their information, of the expense items in the city's capital budget for the fiscal year ending June thirtieth, nineteen hundred seventy-six, and the amount of each such item;

(b) The comptroller (or the independent certified public accounting firm then retained pursuant to subdivision three of this section) shall prepare a determination of and shall report upon the expense items and the amount thereof in the city's capital budget for the fiscal year ending June thirtieth, nineteen hundred seventy-six and for each subsequent fiscal year, in accordance with the aforesaid accounting principles. Such report shall also include a statement as to the city's compliance with the conditions of this subdivision for the fiscal year reported upon and in the budget for the succeeding fiscal year;

(c) Unless the corporation shall approve the inclusion of a greater amount with respect to any such fiscal year, the aggregate amount of all such expense items included in the capital budget, including judgments and claims related to other than capital projects, for the fiscal year ending June thirtieth, nineteen hundred seventy-seven and for the following fiscal year shall be reduced at the cumulative rate of ten percent per year from the aggregate amount for the nineteen hundred seventy-six fiscal year set forth in the report provided for under

paragraph (b) of this subdivision (or set forth in the certification under paragraph (a) of this subdivision if such report has not then been prepared). For the fiscal year ending June thirtieth, nineteen hundred seventy-nine the maximum aggregate amount of all such expense items included in the capital budget shall be four hundred fifty million dollars and for each of the following two fiscal years the aggregate amount of all such expense items included in the capital budget shall be substantially reduced from the aggregate amount for the nineteen hundred seventy-nine fiscal year. For the fiscal year ending June thirtieth, nineteen hundred eighty-two and thereafter, no such expense items shall be included in the city's capital budget;

(d) For the fiscal year ending June thirtieth, nineteen hundred seventy-seven and continuing thereafter, the city shall not include any new or additional item in its capital budget which, in accordance with the aforesaid accounting principles, is properly includable only in its expense budget; and

(e) To implement this subdivision, and in order to provide full disclosure of all expense items properly includable only in the expense budget, the city shall include in its expense budget for each fiscal year by appropriation all expense items which are included in its capital budget for such fiscal year pursuant to paragraph (c) of this subdivision including judgments and claims related to other than capital projects, such items shall be stated separately and distinctly and the city may include in such expense budget as items of income, in addition to all other items of income properly includable in such expense budget pursuant to this section, all amounts to be applied to the payment of such expense items, which amounts may be derived from any source available to the city during such fiscal year, provided that such income shall be listed separately and distinctly.

6. If after the adoption of the expense budget for any fiscal year, any increase therein, or an increase in total expenditures shall be proposed, the mayor shall cause such proposal to be submitted to the corporation concurrently with its submission to the board of estimate and the city council, together with a statement of the source of current income or other identifiable and currently available funds required for the payment of such additional amounts.

7. Commencing at such time as the corporation may specify, but not later than December 1, 1975 the city budget director shall deliver to the corporation, not less than thirty days before each fiscal quarter (except, within thirty days after the commencement of the first fiscal quarter), an expenditure plan to implement the city expense budget for such fiscal quarter and within amounts based on current income or other identifiable and currently available funds. The city budget director shall deliver to the corporation within thirty days after the end of each such fiscal quarter covered by an expenditure plan, an operations report reflecting results of city operations for such fiscal quarter and whether the city has operated within the related expenditure plan. Each expenditure plan and operations report shall be in such form as the corporation may specify and shall be certified by the city budget director and shall detail and report upon action taken by the city to maintain a balanced expense budget.

8. The city shall comply in all material respects with the expenditure limitations in its budgets as adopted or modified in accordance with subdivisions four and six of this section, and with section eight of the New York state financial emergency act for the city of New York as the same may from time to time be amended.

9. a. The city shall not, at any time issue any short-term obligations which would cause the aggregate principal amount of its outstanding short-term obligations plus the aggregate principal amount of all notes and bonds issued by the corporation (less any notes or bonds of the corporation which have been refunded, renewed, redeemed, paid or cancelled and less any notes and bonds deemed to have been paid pursuant to the provisions of any contract with noteholders or bondholders and less any notes other than notes issued in anticipation of the issuance of bonds of the corporation, or bonds of the corporation issued for a purpose set forth in subparagraph (b) of section three thousand thirty-seven or in subparagraph eighteen of section three thousand ten of this article, and less any notes other than notes issued in anticipation of the issuance of bonds of the corporation, or bonds of the corporation issued for the purpose of making deposits into any of

its capital reserve funds, and less any short-term obligations of the city then held by the corporation) to exceed (i) six billion six hundred million (hereinafter called the base debt limit) plus (ii) an additional amount, not exceeding ten percent of the base debt limit; provided, however, that during the fiscal years ending June 30, 1976 and 1977 such additional amount may not exceed thirty per cent of the base debt limit, during the fiscal year ending June 30, 1978 the additional amount may not exceed twenty-five per cent of the base debt limit, during the fiscal year ending June 30, 1979, the additional amount may not exceed twenty per cent of the base debt limit, and during the fiscal year ending June 30, 1980 the additional amount may not exceed fifteen per cent of the base debt limit.

b. In addition to the foregoing limitation the city shall not, at any date, issue any short-term obligations which would cause the aggregate principal amount of its outstanding short-term obligations (excluding bond anticipation notes) plus the aggregate principal amount of all notes and bonds issued by the corporation (less (i) any notes or bonds which have been refunded or renewed and any notes or bonds in an amount equal to the aggregate principal amount of bond anticipation notes of the city acquired by the corporation, whether or not then held by the corporation (except bond anticipation notes of the city acquired by the corporation in consideration of the surrender by the corporation to the city of bond anticipation notes of the city), and any notes or bonds issued for a purpose set forth in subparagraph (b), (c) or (d) of section three thousand thirty-seven, in subdivision two-a of section three thousand thirty-three, or subparagraph eighteen of section three thousand ten of this article, and less any notes or bonds of the corporation issued for the purpose of making deposits into any of its capital reserve funds, (ii) any short-term obligations of the city then held by the corporation other than bond anticipation notes and (iii) any short-term obligations of the city issued and payable within the same fiscal year) to exceed four billion five hundred million dollars plus, in the discretion of the board of directors, an additional amount not exceeding five hundred million dollars plus, in the discretion of the board of directors, until June thirtieth, nineteen hundred seventy-six, a further additional amount not exceeding two hundred million dollars.

c. Notwithstanding any other provision of this act, the corporation shall not have the authority to modify or waive the limitations on the aggregate amount of outstanding short-term obligations of the city permitted to be outstanding in excess of the limits specified in paragraphs (a) and (b) of this subdivision.

d. Not less than twenty days prior to the issuance of any short-term obligations by the city, other than such obligations to be issued to the corporation, on or after July first, nineteen hundred seventy-five, the city comptroller shall deliver to the corporation a notice of intent to issue such obligations, specifying the amount and proposed terms thereof and the authority under which such obligations are proposed to be issued, together with a certificate of the city budget director specifying the purpose and the proposed source of funds for the redemption thereof. The city comptroller and the city budget director shall provide such additional information and shall be available for consultation as the corporation may request. If, within ten days after the receipt of such a notice from the city, the corporation determines after consultation with the city comptroller and the city budget director, that the issuance of such obligations would violate the limitation of this subdivision, the corporation shall deliver to the city comptroller a certified copy of such determination within such 10-day period and the city comptroller shall not thereafter issue such obligations.

* NB The corporation shall continue for a term ending the later of July 1, 2008 or one year after its liabilities have been fully paid and discharged per § 3033 sub 1.