

NEW YORK STATE FINANCIAL EMERGENCY ACT
OF NINETEEN HUNDRED EIGHTY-FOUR
FOR THE CITY OF YONKERS

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Section 1. Short title. This act shall be known and may be cited as the "New York State Financial Emergency Act of Nineteen Hundred Eighty-four for the City of Yonkers".

§ 2. Definitions. As used in this act, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent.

1. "Available funds" means at any date the amounts in the fund which are then available, as determined by the board, to be applied to the purposes stated in paragraph (iii) of subdivision four of section ten of this act after provision has been made for the application of amounts in the fund for the purposes stated in paragraphs (i) and (ii) of

subdivision four of section ten of this act.

2. "Board" means the governmental agency created by section six of this act.

3. "City" means the city of Yonkers.

4. "City manager" means the city manager of the city of Yonkers.

5. "Comptroller" means the comptroller of the state of New York.

6. "Covered organization" means any governmental agency, public authority or public benefit corporation which receives or may receive moneys directly, indirectly or contingently, (other than moneys received for the sale of goods or the rendering of services or the loan of moneys to the city) from the city, and in any event includes, without limitation, the board of education of the city school district of the city of Yonkers.

Notwithstanding the foregoing, the board, by order made on its own motion or on application of a covered organization may specifically exempt the organization from inclusion as a covered organization after a finding by the board that an exemption does not materially affect the ability of the city to adopt and maintain a budget pursuant to the provisions of this act; provided that at the time of and during the period of the exemption there is supplied to the board, an annual audit by an independent certified public accounting firm (or by a public accountant licensed by the state of New York to conduct such audits) of the organization's financial statements performed in accordance with generally accepted auditing standards and a report thereon by the auditor which includes an opinion that the audited financial statements have been prepared in accordance with generally accepted accounting principles and any other information as the auditor deems appropriate; provided further however, that the board may terminate the exemption after a determination that the circumstances upon which the exemption was granted are no longer applicable.

In no event however, shall the term "covered organization" mean or include any governmental agency which is (i) a state public authority as defined in section two hundred one of the civil service law, or (ii) a governmental agency, authority, commission or instrumentality created by compact or agreement between the state of New York and another state or states, or (iii) a subsidiary corporation of an agency described in (i) or (ii) hereof.

7. "Emergency period" means the period of time from the effective date of this act until the date when the board determines that (a) the operating and capital funds of the city shall have been in balance for three fiscal years in accordance with the accounting methods prescribed for the city's budget by the state comptroller pursuant to section thirty-six of the general municipal law, (b) the amount of all loans made by the state to the city to fund the operating deficit incurred by the city in its fiscal year ending June thirtieth, nineteen hundred eighty-four or any fiscal year thereafter has been repaid in full, and (c) the city has presented a financial plan that projects operating and capital fund balance for the four years covered by such plan in accordance with the accounting methods prescribed for the city's budget by the state comptroller pursuant to section thirty-six of the general municipal law.

8. "Financial plan" means the financial plan of the city and the covered organizations to be developed pursuant to section nine of this act, as from time to time modified.

9. "Fund" means the emergency financial control board fund for the city of Yonkers established pursuant to subdivision one of section ten of this act.

10. "Revenues" mean all taxes, federal and state aid, rents, fees, charges, payments, all proceeds from borrowings and other income and receipts paid or payable to or for the account of the city or any of the covered organizations, subject to the requirements imposed by the special fiscal act.

11. "Special fiscal act" means the special local finance and budget act of the city of Yonkers, as enacted by chapter four hundred eighty-eight of the laws of nineteen hundred seventy-six.

12. "Mayor" means the mayor of the city of Yonkers.

§ 3. Legislative declaration of financial emergency. The legislature hereby finds and declares that a state of financial emergency exists within the city of Yonkers.

§ 4. General rights and prohibitions. 1. Neither the city nor any covered organization shall borrow or expend any moneys, or in any way, directly or indirectly, expressly or implicitly engage its credit during the emergency period except in compliance with the provisions of this act and the special fiscal act.

2. Nothing contained in this act shall limit the right of the city or any covered organization to comply with the provisions of any existing contract with or for the benefit of the holders of any bonds or notes of the city or such covered organization or with the provisions of the special fiscal act.

3. Nothing contained in this act shall be construed to impair the right of employees to organize or to bargain collectively.

§ 5. Power of city or covered organization to determine the expenditure of available funds. Nothing contained in this act shall be construed to limit the power of the city or a covered organization to determine, from time to time, within available funds for the city or for such covered organization, the purposes for which expenditures are to be made by the city or such covered organization and the amounts of such expenditures, consistent with the aggregate expenditures then permitted under the financial plan for the city or such covered organization.

§ 6. New York state emergency financial control board for the city of Yonkers; created. There is hereby created the New York state emergency financial control board for the city of Yonkers. The board shall be a governmental agency and instrumentality of the state and it shall have such powers and functions as are set forth in this act.

§ 7. Administration of the board. 1. The membership of the board shall be the secretary of state, the comptroller (pursuant to his authority to supervise the accounts of any political subdivision of the state), the mayor and four members appointed by the governor with the advice and consent of the senate. Such appointed members shall serve at the pleasure of the governor. The secretary of state shall be the chairman of the board and he or his representative shall preside over all meetings of the board. The board shall act by majority vote of the entire board. The board shall maintain a record of its proceedings in such form as it may determine, but such record shall indicate attendance and all votes cast by each member. The secretary of state and comptroller shall be entitled to designate a representative to attend, in his place, meetings of the board and to vote or otherwise act in his behalf. Written notice of such designation shall be furnished to the board by the designating member prior to any meeting attended by his representative. Any representative shall serve at the pleasure of the designating member. No representative shall be authorized to delegate any of his duties or functions to any other person. The temporary president of the senate, speaker of the assembly, minority leader of the senate and minority leader of the assembly shall each be entitled to appoint a representative to the board, the county executive of the county of Westchester shall be entitled to appoint a county official as a representative to the board and the board shall be entitled to appoint a representative to the board to represent the employees of the city of Yonkers. Each such representative shall be entitled to receive notice of and to attend all meetings of the board but shall not be entitled to vote. Each representative shall serve at the pleasure of the appointing official or body, shall be eligible for reappointment, and shall hold office until his successor has been appointed.

2. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state, or political subdivision of the state, any governmental entity operating any public school or college or other public agency or instrumentality or unit of government which exercises governmental powers under the laws of the state, shall forfeit his office or employment by reason of his acceptance or appointment as a member, representative, officer, employee or agent of the board nor shall service as such member, representative, officer, employee or agent of the board be deemed incompatible or in conflict with such office or employment.

3. The members of the board appointed by the governor and all representatives designated by members of the board shall serve without salary or per diem allowance but shall be entitled to reimbursement by the city for actual and necessary expenses incurred in the performance of official duties under this act, provided, however, that such members and representatives are not, at the time such expenses are incurred, public employees otherwise entitled to such reimbursement.

4. The board may delegate to one or more of its officers, employees or agents, such powers and duties as the board may deem proper, except any duties inconsistent with the duties and functions prescribed by any other office or position any such person may hold.

§ 8. Functions of the board. 1. In carrying out the purposes of this act, the board shall perform the following functions:

a. As set forth in section nine of this act, the board shall (i) consult with the city and the covered organizations in the preparation of the financial plan, and certify to the city the revenue estimates approved therein, (ii) prescribe the form of the financial plan and the supporting information required in connection therewith, and (iii) exercise the rights of approval, disapproval and modification with respect to the financial plan, including but not limited to the revenue estimates contained therein.

b. As set forth in section ten of this act, the board shall establish and adopt procedures with respect to the deposit of revenues of the city and the covered organizations in the fund and the disbursement of moneys from the fund.

c. The board shall, from time to time and to the extent it deems necessary or desirable in order to accomplish the purposes of this act, (i) review the operations, management, efficiency and productivity of such city operations and of such covered organizations or portions thereof as the board may determine, and make reports thereon; (ii) audit compliance with the financial plan in such areas as the board may determine; (iii) recommend to the city and the covered organizations such measures relating to their operations, management, efficiency and productivity as it deems appropriate to reduce costs and improve services so as to advance the purposes of this act; and (iv) obtain information on the financial condition and needs of the city and the covered organizations. Nothing herein shall diminish the powers of the comptroller otherwise provided by law and the board may request the assistance of the comptroller in the performance of the above functions.

d. The board shall (i) receive from the city and the covered organizations and from the comptroller, and review, such financial statements and projections, budgetary data and information, and management reports and materials as the board deems necessary or desirable to accomplish the purposes of this act, and (ii) inspect, copy and audit such books and records of the city and the covered organizations as the board deems necessary or desirable to accomplish the purposes of this act.

e. All contracts entered into by the city or any covered organization must be consistent with the provisions of this act and must comply with the requirements of the financial plan as approved by the board. With respect to all contracts or other obligations to be entered into by the city or any covered organization after May first, nineteen hundred eighty-four, requiring the payment of funds or the incurring of costs by the city or any covered organization:

(i) Within twenty days from May 2, 1984, the city manager shall present to the board proposed regulations respecting the categories and types of contracts and other obligations required to be reviewed by the board pursuant to this subdivision. Within thirty days from May 2, 1984, the board shall approve or modify and approve such proposed regulations or promulgate its own in the event that such proposed regulations are not submitted to it within the twenty days as provided for herein. Such regulation may thereafter be modified by the board from time to time on not less than thirty days notice to the city manager on or before December 31, 1991 and thereafter to the mayor and the city manager, or mayor, respectively, may from time to time propose modifications to the board. Unless expressly disapproved or modified by the board within thirty days from the date of submission by the city manager or mayor, any such proposed regulations or modifications shall be deemed approved by the board;

(ii) Prior to entering into any contract or other obligation subject to review of the board under its regulations, the city or any covered organization shall submit a copy of such contract or other obligation to the board accompanied by an analysis of the projected costs of such contract or other obligation and a certification that performance thereof will be in accordance with the financial plan, all in such form and with such additional information as the board may prescribe. The board shall promptly review the terms of such contract or other obligation and the supporting information in order to determine compliance with the financial plan;

(iii) The board shall, by order, disapprove any contract or other obligation reviewed by it only after enactment of a resolution determining that, in its judgment, the performance of such contract or other obligation would be inconsistent with the financial plan, and upon such order the city or covered organization shall not enter into such contract or other obligation;

(iv) If the board approves the terms of a reviewed contract or other obligation, the city or covered organization may enter into such contract or other obligation upon the terms submitted to the board. Failure of the board to notify the city or covered organization within thirty days (or such additional time, not exceeding thirty days, as the board shall have notified the city or covered organization that it

requires to complete its review and analysis) after submission to it of a contract or other obligation that such contract or other obligation has been disapproved shall be deemed to constitute board approval thereof.

f. The board shall review the terms of each proposed long-term and short-term borrowing by the city and any covered organization to be effected during the emergency period after May first, nineteen hundred eighty-four, and no such borrowing shall be made unless it complies with the provisions of the special fiscal act and is approved by the board. The board shall consult and coordinate with the comptroller with respect to the borrowings of the city and any covered organization and shall receive reports from the comptroller on his review of borrowings by the city. No covered organization shall be prohibited from issuing bonds or notes to pay outstanding bonds or notes.

g. The board shall receive quarterly reports from the comptroller setting forth the debt service requirements on all bonds and notes of the city and covered organizations for the following quarter.

h. The board shall issue, to the appropriate official of the city and the covered organization, such orders as it deems necessary to accomplish the purposes of this act, including but not limited to, timely and satisfactory implementation of an approved financial plan. Any order so issued shall be binding upon the official to whom it was issued and failure to comply with such order shall subject the official to the penalties described in section twelve of this act.

i. The board shall coordinate with the comptroller with respect to the performance of its review and monitoring of the revenues and expenditures of the city and covered organizations.

2. In carrying out its functions under this act, including making its determination whether to approve or disapprove a financial plan or financial plan modification of the city, the board shall ensure compliance by the city with the requirements imposed by the special fiscal act, and all the requirements of such act shall apply to a

financial plan of the city. Nothing contained in this act shall be construed to amend, repeal, be inconsistent with, less stringent or less restrictive than the special fiscal act. If any inconsistencies or conflicts between this act and the special fiscal act shall result from the operations of the board or otherwise, the provisions of the special fiscal act shall control as provided in subdivision (F) of section fourteen of the special fiscal act.

3. a. Notwithstanding the provisions or limitations of any law, general, special or local, including the charter of the city of Yonkers, an impasse panel, arbitrator, collective bargaining board, fact finding or similar type of panel, body or individual which is authorized to recommend or award an increase in wages or fringe benefits to any employee of the city or covered organization shall, in addition to considering any standard or factor required to be considered by applicable law, also take into consideration and accord substantial weight to the financial ability of the city or covered organization to pay the cost of such increase in wages or fringe benefits.

b. Any determination pursuant to article eight of the labor law or any agreement or stipulation entered into in lieu thereof which provides for an increase in wages or fringe benefits of any employee of the city or covered organization shall, in addition to considering any standard or factor required to be considered by applicable law, also take into consideration and accord substantial weight to the financial ability of the city or covered organization to pay the cost of such increase in wages or fringe benefits.

c. Any party to a proceeding before a panel, body or individual as described in paragraph a or b of this subdivision may commence a special proceeding in the appellate division, second department, supreme court, state of New York, to review the determination as to the city or covered organization's financial ability to pay. Such proceeding shall be commenced not later than thirty days after the final determination has been made by the panel, body or individual. Such proceeding shall have preference over all other cases in such appellate division, other than cases relating to the election law.

d. The court shall make a de novo review of the record solely for the purpose of determining whether an award of an increase in wages or fringe benefits was within the city's or covered organization's financial ability to pay. The court's findings as to such issue shall be based upon a preponderance of all the evidence set forth in the record. Unless the parties stipulate otherwise, arguments or submission shall be had within fifteen days after commencement of the special proceeding and the court shall render its decision within fifteen days thereafter. All questions, other than the question relating to the determination, shall be reviewed by the appellate division in the same proceeding in the manner provided by article seventy-five or seventy-eight of the civil practice law and rules as may be appropriate, notwithstanding that the issue would otherwise have been cognizable in the first instance before a special or trial term of the supreme court. If an appeal shall otherwise lie from such determination of the appellate division to the court of appeals, notice of such appeal shall be filed within thirty days after the entry of the final order or judgment of the appellate division if such appeal is of right or within ten days after entry of an order granting leave to appeal, and such appeal shall have preference over all other appeals other than appeals relating to the election law.

e. At any stage of any proceeding under paragraph a, b or c hereof or any appeal from an order or judgment therefrom the board may intervene as a party on the issue of the financial ability of the city or covered organization to pay the cost of an increase in wages or fringe benefits.

f. For the purposes of this subdivision, financial ability to pay shall mean the financial ability of the city or covered organization to pay the cost of any increase in wages or fringe benefits without requiring an increase in the level of city taxes as approved in the financial plan of the city in effect at the time of the commencement of a proceeding under paragraph a or b hereof.

§ 9. Development of the financial plan. 1. Pursuant to the procedures contained in subdivision two of this section, each year the city shall

develop, and may from time to time modify, with the approval of the board, a four year financial plan covering the city and the covered organizations. Each such financial plan and financial plan modification shall conform to the requirements of subdivision three of this section and shall (a) provide that the operating and capital funds of the city will be balanced in accordance with the accounting system and procedures prescribed by the comptroller pursuant to section thirty-six of the general municipal law, and (b) comply with the requirements of the special fiscal act.

2. The financial plan shall be developed and approved, and may from time to time be modified, with the approval of the board, in accordance with the following procedures:

a. Commencing with the city's fiscal year beginning July first, nineteen hundred eighty-four, and not later than fifty days prior to the beginning of such fiscal year and each fiscal year thereafter, or such other date as the board may approve at the request of the city, the city shall prepare and submit a financial plan to the board covering the four year period beginning with such fiscal year. On such dates, the mayor shall also submit to the board the city's proposed operating and capital budgets for the ensuing fiscal year and a certificate of the mayor stating that such budgets are consistent with the financial plan submitted therewith, that the budgets conform in all respects to the requirements of the special fiscal act, and that operation within the budgets is feasible.

b. Not more than forty-five days after submission of a financial plan or more than thirty days after submission of a financial plan modification, the board shall determine whether the financial plan or financial plan modification is complete and complies with the provisions of subdivision one of this section and shall approve or disapprove the financial plan or financial plan modification in accordance with the provisions of this section.

c. If the board determines that the financial plan or financial plan modification is complete and complies with the standards set forth in

subdivision one of this section, the board shall approve the financial plan or financial plan modification. Upon making such determination, the board shall make a certification to the city setting forth revenue estimates approved by the board in accordance with such determination.

d. The board shall disapprove, by resolution, the financial plan proposed by the city if, in the judgment of the board, such plan:

(i) is incomplete;

(ii) fails to contain projections of revenues and expenditures that are based on reasonable and appropriate assumptions and methods of estimation;

(iii) fails to provide that operations of the city and the covered organizations will be conducted within the cash resources available according to the board's revenue estimates; or

(iv) fails to comply with the provisions of subdivision one of this section.

e. In disapproving a financial plan or financial plan modification proposed by the city, the board may direct that the aggregate expenditures in any period be reduced to conform to the revenue estimates certified by the board to achieve the objectives set forth in subdivision one of this section.

f. In the event that the city shall, for any reason, fail to submit a financial plan, as required pursuant to paragraph a of this subdivision, or to adopt a financial plan approved by the board, or in the event that the board has not, for any reason permitted under this act, approved a financial plan submitted by the city, the board, after enactment of a resolution so finding, shall formulate and adopt a financial plan to be effective until the board approves a financial plan submitted by the city. All budgets and operations of the city or a covered organization shall be in conformance and compliance with the financial plan then in effect.

g. After the initial adoption of the financial plan, the revenue estimates certified by the board and the financial plan shall be regularly reexamined by the board in consultation with the city and the

covered organizations and the city shall provide a modified financial plan in such detail and within such time period as the board may require. In the event of reductions in such revenue estimates, or in the event the city or a covered organization shall expend funds at a rate that would exceed the aggregate expenditure limitation for the city or covered organization prior to the expiration of the fiscal year, the city shall submit a financial plan modification to effect such adjustments in revenue estimates and reductions in total expenditures as may be necessary to conform to such revised revenue estimates or aggregate expenditure limitations. If, within a time period specified by the board, the city fails to make such modifications after reductions in revenue estimates, or to provide a modified plan in detail and within such time period required by the board, the board, after enactment of a resolution so finding, may formulate and adopt such modifications to the financial plan, such modifications to become effective on their adoption.

h. The city may, from time to time, submit financial plan modifications for review by the board. The board shall approve such modifications unless, in the judgment of the board, such modifications would constitute grounds for disapproval of a financial plan pursuant to paragraph d of this subdivision.

3. The financial plan shall be in such form and shall contain such information for each year during which the financial plan is in effect as the board may specify, shall include the city and all the covered organizations, and shall, in such detail as the board may from time to time prescribe, include statements of all estimated revenues and of all expenditures and cash flow projections of the city and each of the covered organizations.

4. The financial plan shall, except to the extent waived by the board with respect to any limited period, include any information which the board may request to satisfy itself that (i) projected employment levels, collective bargaining agreements and other action relating to employee costs, capital construction and such other matters as the board may specify, are consistent with the provisions made for such

obligations in the financial plan, (ii) the city and the covered organizations are taking whatever action is necessary with respect to programs mandated by state and federal law to ensure that expenditures for such programs are limited to and covered by the expenditures stated in the financial plan, and (iii) adequate reserves are provided to maintain essential programs in the event revenues have been overestimated or expenditures underestimated for any period.

5. For each financial plan and financial plan modification to be prepared and submitted by the city to the board pursuant to the provisions of this section, the covered organizations shall submit to the city such information with respect to their projected expenditures, revenues and cash flows for each year covered by such financial plan or modification as the city shall determine. Notwithstanding any other provision of law limiting the authority of the city with respect to any covered organization, the city, in the preparation and submission of the financial plan and modifications thereof, shall (except for debt service or for other expenditures to the extent that such expenditures are required by law) have the power to determine the aggregate expenditures to be allocated to any covered organization in the financial plan and any modifications thereto.

§ 10. Establishment and application of emergency financial control board fund for the city of Yonkers. 1. There is hereby established a fund designated the emergency financial control board fund for the city of Yonkers. Commencing on the effective date of the initial financial plan approved by the board and for the duration of the emergency period, all revenues received or to be received by the city or any covered organization shall, unless exempted by order of the board or to the extent otherwise required by the special fiscal act, be revenues of the fund and shall be for the account of the city and the appropriate covered organizations, but disbursement from the fund shall be made by the board in accordance with the approved financial plan, except to the extent otherwise required by the special fiscal act, expressly prohibited by federal law or where such revenues are pledged to the payment of any outstanding bonds, notes or other obligations of covered

organizations. Notwithstanding the foregoing, the board shall authorize the city to make all disbursements of city revenues from the board fund, which disbursements shall be made in accordance with the approved financial plan; provided, that the board may withdraw such authorization if it determines that (a) any disbursements made or to be made by the city have not been or are likely not to be in compliance with the approved financial plan, (b) the city has violated any other provisions of this act or the special fiscal act, or (c) the city has violated an agreement with any holder or guarantor of bonds or notes issued by the city or a state financing agency. Commencing on the effective date of the initial financial plan approved by the board, and for the duration of the emergency period, all funds and accounts established or thereafter established by the city of the covered organizations shall, unless exempted by order of the board, thereafter be funds and accounts of the fund except to the extent otherwise required by the special fiscal act, expressly prohibited by federal law or to the extent prohibited by covenants or agreements relating to any outstanding bonds, notes or other obligations of covered organizations. All such accounts of the board shall have such captions and entries as the board shall determine to be necessary to credit the foregoing revenues and receipts to the fund. The moneys of the fund shall not be deemed to be money of the state or money under its control.

2. The deposit of revenues into the fund and the investment or deposit of moneys therein shall be made in accordance with and pursuant to procedures established by the board and the special fiscal act.

3. In order to assure compliance with the financial plan, the board shall from time to time adopt procedures controlling the disbursement of moneys from the fund.

4. If at any time the board determines that the amount then held in the fund or the amount estimated by the board to be held in the fund is or will be insufficient to meet the expenditures in the amounts and at the times required by the financial plan, the board shall require disbursements from the fund to be made in the following order or priority unless otherwise required by law of the United States of

America: (i) the payment of amounts from the fund to comply with the provisions of the special fiscal act, (ii) the payment of other liabilities having statutory or contractual priority over remaining liabilities of the city and the covered organizations whose moneys are included in the fund, and (iii) the payment of other obligations on an allocated basis as specified by the city for expenditures in accordance with the financial plan provided that, in the event that the city fails to so specify, the board may withhold payment of any of such other obligations or may direct their payment pro rata.

5. The board shall cause to be performed such pre-audit and post-audit reviews of the fund and disbursements therefrom as it may determine.

§ 11. Authorization for wage freeze. 1. Upon a finding by the board that a wage freeze is essential to the adoption or maintenance of a city budget that is in compliance with this act, the board, after enactment of a resolution so finding, may declare a fiscal crisis. Upon making such a declaration, the board shall be empowered to order that all increases in salary or wages of employees of the city and employees of covered organizations which will take effect after the date of the order pursuant to collective bargaining agreements or other analogous contracts, now in existence or hereafter entered into, requiring such salary increases as of any date thereafter are suspended. Such order may also provide that all increased payments for holiday and vacation differentials, shift differentials, salary adjustments according to plan and step-ups or increments for employees of the city and employees of covered organizations which will take effect after the date of the order pursuant to collective bargaining agreements or other analogous contracts requiring such increased payments as of any date thereafter are, in the same manner, suspended. For the purposes of computing the pension base of retirement allowances, any suspended salary or wage increases and any suspended other payments shall not be considered as part of compensation or final compensation or of annual salary earned or earnable. The suspensions authorized hereunder shall continue until one year after the date of the order and, to the extent of any determination of the board that a continuation of such suspensions, to a date

specified by the board, is necessary in order to achieve the objectives of the financial plan, such suspensions shall be continued to the date specified by such board, which date shall in no event be later than the end of the emergency period, provided that such suspensions shall terminate with respect to employees who have agreed to a deferral of salary or wage increase upon the certification of the agreement by the board pursuant to subdivision two of this section.

2. This section shall not be applicable to employees of the city or employees of a covered organization covered by a collective bargaining agreement or an employee of the city or a covered organization not covered by a collective bargaining agreement where the collective bargaining representative or such unrepresented employee has agreed to a deferment of salary or wage increase, by an instrument in writing which has been certified by the board as being an acceptable and appropriate contribution toward alleviating the fiscal crisis of the city. Any such agreement to a deferment of salary or wage increase may provide that for the purposes of computing the pension base of retirement allowances, any deferred salary or wage increase may be considered as part of compensation or final compensation or of annual salary earned or earnable.

3. The board may, if it finds that the fiscal crisis has been sufficiently alleviated or for any other appropriate reason, direct that the suspensions of salary or wage increases or suspensions of other increased payments or benefits shall, in whole or in part, be terminated.

§ 12. Prohibitions; penalties. 1. During the emergency period (i) no officer or employee of the city or of any of the covered organizations shall make or authorize an obligation or other liability in excess of the amount available therefor under the financial plan as then in effect; (ii) no officer or employee of the city or of any of the covered organizations shall involve the city or any of the covered organizations in any contract or other obligation or liability for the payment of money for any purpose required to be approved by the board unless such

contract has been so approved and unless such contract or obligation or liability is in compliance with the financial plan as then in effect.

2. No officer or employee of the city or any of the covered organizations shall take any action in violation of any valid order of the board or shall fail or refuse to take any action required by any such order or shall prepare, present or certify any information (including any projections or estimates) or report for the board or any of its agents that is false or misleading, or, upon learning that any such information is false or misleading, shall fail promptly to advise the board or its agents thereof.

3. In addition to any penalty or liability under any other law, any officer or employee of the city or any of the covered organizations who shall violate subdivision one or two of this section shall be subject to appropriate administrative discipline, including, when circumstances warrant, suspension from duty without pay or removal from office by order of either the governor or the mayor; and any officer or employee of the city or any of the covered organizations who shall knowingly and willfully violate subdivision one or two of this section shall, upon conviction, be guilty of a misdemeanor.

4. In the case of a violation of subdivision one or two of this section by an officer or employee of the city or any of the covered organizations, the mayor or the chief executive officer of such covered organization shall immediately report to the board all pertinent facts together with a statement of the action taken thereon.

§ 13. Indemnification. 1. The state shall save harmless and indemnify members, officers and employees of and representatives to the board, all of whom shall be deemed officers and employees of the state for purposes of section seventeen of the public officers law, against any claim, demand, suit, or judgment arising by reason of any act or omission to act by such member, officer, employee or representative occurring in the discharge of his duties and within the scope of his service on behalf of such board including any claim, demand, suit or judgment based on

allegations that financial loss was sustained by any person in connection with the acquisition, disposition or holding of securities or other obligations. In the event of any such claim, demand, suit or judgment, a member, officer or employee of or representative to the board shall be saved harmless and indemnified, notwithstanding the limitations of subdivision one of section seventeen of the public officers law, unless such individual is found by a final judicial determination not to have acted, in good faith, for a purpose which he reasonably believed to be in the best interest of the board or not to have had reasonable cause to believe that his conduct was lawful.

2. In connection with any such claim, demand, suit, or judgment, any member, officer or employee of or representative to the board 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 individual in writing of such determination that the individual is entitled to be represented by private counsel. The attorney general may require, as a condition to payment of the fees and expenses of such representative, that appropriate groups of such individuals be represented by the same counsel. If the individual or groups of individuals is entitled to representation by private counsel under the provisions of this section, the attorney general shall so certify to the comptroller. Reasonable attorneys fees and litigation expenses shall be paid by the state to such private counsel from time to time during the pendency of the civil action or proceeding, subject to certification that the individual is entitled to representation under the terms and conditions of this section by the chairman of the board, upon the audit and warrant of the comptroller. The provisions of this subdivision shall be in addition to and shall not supplant any indemnification or other benefits heretofore or hereafter conferred upon members, officers, or employees of and representatives to the board by section seventeen of the public officers law, by action of the board or otherwise. The provisions of this subdivision shall inure only to members, officers and employees of and representatives to the board, 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.

§ 14. Termination. Six months after the end of the emergency period, the existence of the board and all other provisions of this act not theretofore terminated shall terminate.