

# STATE OF NEW YORK

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5529

2009-2010 Regular Sessions

## IN SENATE

May 14, 2009

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Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the local finance law, in relation to the sale of bonds and notes of the city of New York, the refunding of bonds, the down payment for projects financed by bonds, variable rate debt, and interest rate exchange agreements of the city of New York; to amend the New York state financial emergency act for the city of New York, in relation to a pledge and agreement of the state; and to amend chapter 142 of the laws of 2004, amending the local finance law relating to interest rate exchange agreements of the city of New York and refunding bonds of such city, in relation to the effectiveness thereof

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

- 1 Section 1. The opening paragraph of paragraph (a) of section 54.10 of  
 2 the local finance law, as amended by chapter 117 of the laws of 2008, is  
 3 amended to read as follows:  
 4 To facilitate the marketing of any issue of bonds or notes of the city  
 5 of New York issued on or before June thirtieth, two thousand [~~nine~~ ten,  
 6 the mayor and comptroller of such city may, subject to the approval of  
 7 the state comptroller and the limitations on private sales of bonds and  
 8 notes, respectively, provided by law:  
 9 § 2. The opening paragraph of paragraph a of section 57.00 of the  
 10 local finance law, as amended by chapter 117 of the laws of 2008, is  
 11 amended to read as follows:  
 12 Bonds shall be sold only at public sale and in accordance with the  
 13 procedure set forth in this section and sections 58.00 and 59.00 of this  
 14 title, except as otherwise provided in this paragraph. Bonds may be sold  
 15 at private sale to the United States government or any agency or instru-  
 16 mentality thereof, the state of New York municipal bond bank agency, to  
 17 any sinking fund or pension fund of the municipality, school district or  
 18 district corporation selling such bonds, or, in the case of sales by the

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

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1 city of New York prior to July first, two thousand [~~nine~~] ten, also to  
2 the municipal assistance corporation for the city of New York or to any  
3 other purchaser with the consent of the mayor and the comptroller of  
4 such city and approval of the state comptroller, or, in the case of  
5 sales by the county of Nassau prior to December thirty-first, two thou-  
6 sand seven, also to the Nassau county interim finance authority with the  
7 approval of the state comptroller, or, in the case of sales by the city  
8 of Buffalo prior to June thirtieth, two thousand thirty-seven, also to  
9 the Buffalo fiscal stability authority with the approval of the state  
10 comptroller, or, in the case of bonds or other obligations of a munici-  
11 pality issued for the construction of any sewage treatment works, sewage  
12 collecting system, storm water collecting system, water management  
13 facility, air pollution control facility or solid waste disposal facili-  
14 ty, also to the New York state environmental facilities corporation, or,  
15 in the case of bonds or other obligations of a school district or a city  
16 acting on behalf of a city school district in a city having a population  
17 in excess of one hundred twenty-five thousand but less than one million  
18 inhabitants according to the latest federal census, issued to finance or  
19 refinance the cost of school district capital facilities or school  
20 district capital equipment, as defined in section sixteen hundred seven-  
21 ty-six of the public authorities law, also to the dormitory authority of  
22 the state of New York. Bonds of a river improvement or drainage district  
23 established by or under the supervision of the department of environ-  
24 mental conservation may be sold at private sale to the State of New York  
25 as investments for any funds of the state which by law may be invested,  
26 provided, however, that the rate of interest on any such bonds so sold  
27 shall be approved by the water power and control commission and the  
28 state comptroller. Bonds may also be sold at private sale as provided in  
29 section 63.00 of this title. No bonds shall be sold on option or on a  
30 deferred payment plan, except that options to purchase, effective for a  
31 period not exceeding one year, may be given:

32 § 3. Subdivision 3 of paragraph g of section 90.00 of the local  
33 finance law, as amended by chapter 117 of the laws of 2008, is amended  
34 to read as follows:

35 3. Outstanding bonds may, pursuant to a power to recall and redeem or  
36 with the consent of the holders thereof, be exchanged for refunding  
37 bonds (i) if the refunding bonds are to bear interest at a rate equal to  
38 or lower than that borne by the bonds to be refunded or (ii) if, in the  
39 case of the city of New York prior to July first, two thousand [~~nine~~]  
40 ten, the annual payment required for principal and interest on the  
41 refunding bond is less than the annual payment required for principal  
42 and interest on the bond to be refunded, in each case such annual  
43 payments to be determined by dividing the total principal and interest  
44 payments due over the remaining life of the bond by the number of years  
45 to maturity of the bond or (iii) if the bonds to be refunded were issued  
46 by the city of New York after June thirtieth, nineteen hundred seventy-  
47 eight and prior to July first, two thousand [~~nine~~] ten and contain  
48 covenants referring to the existence of the New York state financial  
49 control board for the city of New York or any other covenants relating  
50 to matters other than the prompt payment of principal and interest on  
51 the obligations when due and the refunding bond omits or modifies any  
52 such covenant.

53 § 4. Subdivision 8 of paragraph d of section 107.00 of the local  
54 finance law, as amended by chapter 117 of the laws of 2008, is amended  
55 to read as follows:

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1 8. Notwithstanding any other provision of law, the financing by the  
2 city of New York prior to July first, two thousand [~~nine~~] ten of any  
3 object or purpose which has a period of probable usefulness determined  
4 by law by the issuance of any bonds or notes, including (i) the issuance  
5 of bonds or notes to obtain reimbursement for funds heretofore advanced  
6 for the object or purpose for which the bonds or notes are being issued,  
7 (ii) the issuance of bonds or notes to redeem notes previously issued  
8 for the object or purpose for which the bonds or notes are being issued  
9 or (iii) the issuance of bonds to refund bonds previously issued for the  
10 object or purpose for which bonds are being issued.

11 § 5. The closing paragraph of paragraph a of section 54.90 of the  
12 local finance law, as amended by chapter 117 of the laws of 2008, is  
13 amended to read as follows:

14 Notwithstanding the foregoing, whenever in the judgment of the finance  
15 board of the city of New York the interest of such city would be served  
16 thereby, the city of New York may without further approval issue bonds  
17 or notes, on or before July fifteenth, two thousand [~~nine~~] ten, with  
18 interest rates that vary in accordance with a formula or procedure and  
19 are subject to a maximum rate of interest set forth or referred to in  
20 the bonds or notes and may provide the holders thereof with such rights  
21 to require the city or other persons to purchase such bonds or notes or  
22 renewals thereof from the proceeds of the resale thereof or otherwise  
23 from time to time prior to the final maturity of such bonds or notes as  
24 the finance board of the city of New York may determine and the city may  
25 resell, at any time prior to final maturity, any such bonds or notes  
26 acquired as a result of the exercise of such rights; provided, however,  
27 that at no time shall the total principal amount of bonds and notes  
28 issued by the city of New York pursuant to this paragraph (other than  
29 bonds and notes (1) bearing interest at rates and for periods of time  
30 that are specified without reference to future events or contingencies,  
31 or (2) described in section 136.00 of this article) exceed twenty-five  
32 percent of the limit prescribed by section 104.00 of this article.

33 § 6. The opening paragraph of subdivision 1 of paragraph d of section  
34 54.90 of the local finance law, as amended by chapter 117 of the laws of  
35 2008, is amended to read as follows:

36 On or before July fifteenth, two thousand [~~nine~~] ten the mayor and  
37 comptroller of the city of New York may:

38 § 7. Subdivision 1 of section 10-a of section 2 of chapter 868 of the  
39 laws of 1975, constituting the New York state financial emergency act  
40 for the city of New York, as amended by chapter 117 of the laws of 2008,  
41 is amended to read as follows:

42 1. In the event that after the date on which the provisions of this  
43 act become operative, any notes or bonds are issued by the city prior to  
44 July 1, [~~2009~~] 2010, or any bonds are issued by a state financing agen-  
45 cy, the state of New York hereby authorizes the city and authorizes and  
46 requires such state financing agency to include a pledge and agreement  
47 of the state of New York in any agreement made by the city or such state  
48 financing agency with holders or guarantors of such notes or bonds that  
49 the state will not take any action which will (a) substantially impair  
50 the authority of the board during a control period, as defined in subdi-  
51 vision twelve of section two of this act as in effect on the date such  
52 notes or bonds are issued (i) to approve, disapprove, or modify any  
53 financial plan or financial plan modification, including the revenue  
54 projections (or any item thereof) contained therein, subject to the  
55 standards set forth in paragraphs a, c, d, e and f of subdivision one of  
56 section eight of this act as in effect on the date such notes or bonds

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1 are issued and paragraph b of such subdivision as in effect from time to  
2 time, (ii) to disapprove a contract of the city or a covered organiza-  
3 tion if the performance of such contract would be inconsistent with the  
4 financial plan or to approve or disapprove proposed short-term or long-  
5 term borrowing of the city or a covered organization or any agreement or  
6 other arrangement referred to in subdivision four of section seven of  
7 this act, or (iii) to establish and adopt procedures with respect to the  
8 deposit in and disbursement from the board fund of city revenues; (b)  
9 substantially impair the authority of the board to review financial  
10 plans, financial plan modifications, contracts of the city or the  
11 covered organizations and proposed short-term or long-term borrowings of  
12 the city and the covered organizations; (c) substantially impair the  
13 independent maintenance of a separate fund for the payment of debt  
14 service on bonds and notes of the city; (d) alter the composition of the  
15 board so that the majority of the voting members of the board are not  
16 officials of the state of New York elected in a state-wide election or  
17 appointees of the governor; (e) terminate the existence of the board  
18 prior to the time to be determined in accordance with section thirteen  
19 of this act as in effect on the date such notes or bonds are issued; (f)  
20 substantially modify the requirement that the city's financial state-  
21 ments be audited by a nationally recognized independent certified public  
22 accounting firm or consortium of firms and that a report on such audit  
23 be furnished to the board; or (g) alter the definition of a control  
24 period set forth in subdivision twelve of section two of this act, as in  
25 effect on the date such notes or bonds are issued, or substantially  
26 alter the authority of the board, as set forth in said subdivision to  
27 reimpose or terminate a control period; provided, however, that the  
28 foregoing pledge and agreement shall be of no further force and effect  
29 if at any time (i) there is on deposit in a separate trust account with  
30 a bank, trust company or other fiduciary sufficient moneys or direct  
31 obligations of the United States or obligations guaranteed by the United  
32 States, the principal of and/or interest on which will provide moneys to  
33 pay punctually when due at maturity or prior to maturity by redemption,  
34 in accordance with their terms, all principal of and interest on all  
35 outstanding notes and bonds of the city or such state financing agency  
36 containing this pledge and agreement and irrevocable instructions from  
37 the city or such state financing agency to such bank, trust company or  
38 other fiduciary for such payment of such principal and interest with  
39 such moneys shall have been given, or (ii) such notes and bonds, togeth-  
40 er with interest thereon, have been paid in full at maturity or have  
41 otherwise been refunded, redeemed, defeased, or discharged; and provided  
42 further that the foregoing pledge and agreement shall be of full force  
43 and effect upon its inclusion in any agreement made by the city or state  
44 financing agency with holders or guarantors of such notes or bonds.

45 Upon payment for such obligations issued pursuant to this act by the  
46 original and all subsequent holders inclusion of the foregoing covenant  
47 shall be deemed conclusive evidence of valuable consideration received  
48 by the state and city for such covenant and of reliance upon such pledge  
49 and agreement by any such holder. The state hereby grants any such bene-  
50 fited holder the right to sue the state in a court of competent juris-  
51 diction and enforce this covenant and agreement and waives all rights of  
52 defense based on sovereign immunity in such an action or suit.

53 § 8. Section 5 of chapter 142 of the laws of 2004, amending the local  
54 finance law relating to interest rate exchange agreements of the city of  
55 New York and refunding bonds of such city, as amended by chapter 117 of  
56 the laws of 2008, is amended to read as follows:

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1 § 5. This act shall take effect immediately, provided, that section  
2 three of this act shall expire and be deemed repealed July 15, ~~[2009]~~  
3 2010.

4 § 9. Separability. If any clause, sentence, paragraph, section or part  
5 of this act shall be adjudged by any court of competent jurisdiction to  
6 be invalid, such judgment shall not affect, impair or invalidate the  
7 remainder thereof, but shall be confined in its operation to the clause,  
8 sentence, paragraph, section or part thereof directly involved in the  
9 controversy in which such judgment shall have been rendered.

10 § 10. This act shall take effect immediately.

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**NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S5529

SPONSOR: KRUGER

TITLE OF BILL:

An act to amend the local finance law, in relation to the sale of bonds and notes of the city of New York, the refunding of bonds, the down payment for projects financed by bonds, variable rate debt, and interest rate exchange agreements of the city of New York; to amend the New York state financial emergency act for the city of New York, in relation to a pledge and agreement of the state; and to amend chapter 142 of the laws of 2004, amending the local finance law relating to interest rate exchange agreements of the city of New York and refunding bonds of such city, in relation to the effectiveness thereof

SUMMARY OF PROVISIONS:

Section one of this bill would amend § 54.10(a) of the Local Finance Law ("LFL") to extend until 2010 the provisions of such section authorizing the City to sell its obligations through negotiated agreement, to provide for compensation for services rendered in connection with the private sale of obligations by selling such obligations at a discount, to provide for redemption of its obligations prior to maturity at prices and pursuant to terms determined by the City, and to include the costs of a negotiated underwriting and other costs of issuance of its obligations in the cost of the object or purpose being financed by such obligations.

Section two would amend LFL § 57.00(a) to extend until 2010 the City's authority to sell bonds at private sale.

Section three would amend LFL § 90.00(g)(3) to extend until 2010 the City's authorization to exchange refunding bonds for outstanding bonds under certain circumstances.

Section four would amend LFL § 107.00(d)(8) to extend until 2010 the inapplicability of the down payment provisions of that section to certain bonds and notes of the City.

Section five of the bill would amend LFL § 54.90 (a) to extend through July 15, 2010 the authorization for the City to issue bonds or notes with variable rates of interest

Section six of the bill would amend LFL § 54.90(d)(1) to extend through July 15, 2010 the authorization for the City to enter into interest rate exchange agreements (commonly referred to as "swaps") or other similar agreements.

Section seven would amend § 10-a(1) of the New York State Financial Emergency Act for the City of New York ("FEA") to extend until 2010 the

authority of the City to include the pledge and agreement of the State in agreements with holders or guarantors of City obligations.

Section eight would amend § 5 of Ch. 142 of the laws of 2004 to extend until 2010 the amendment to section 90.10(b)(2)(a) of the LFL providing that for purposes of calculating present value savings in a refund transaction, the interest payments on variable rate bonds may be the fixed rate payable by the City in a related interest rate exchange agreement, if any, or as found by the Finance Board of the City of New York ("Finance Board"); and in the case of refunding of variable rate bonds with variable rate bonds, if determined by the Finance Board, present value savings would not need to be demonstrated.

#### REASONS FOR SUPPORT:

This bill includes several elements that will be instrumental in ensuring that the City of New York has efficient and cost-effective access to the capital markets, which have been experiencing unprecedented turmoil over the past year. First, in 1978, the Legislature enacted various provisions of the LFL and the FEA to respond to the financial emergency existing in the City and to improve marketability of City obligations by authorizing their sale on terms consistent with current market practices. Certain of these provisions contained sunset provisions, and in 1982, the Legislature extended certain sunset provisions and introduced other changes necessary for the continued successful marketing of City obligations, some of which were applicable to other municipal issuers as well. Since 1986, the Legislature has extended these sunset provisions annually.

This network of legislation has enabled the City to continue to sell its obligations in the public credit markets during these difficult times. Indeed, the size of the City's capital program and the current market environment, in which competitive sales of debt have, on occasion, failed to attract any bidders, makes the ability to sell debt through negotiated sales crucial to the City. If the City is to continue to undertake necessary capital projects, it is essential that it retain its ability to utilize modern financing techniques. The extension of these sunset provisions therefore is essential to the City's fiscal health, especially in light of the current economic downturn.

Second, by extending through July 15, 2010 the authorization of the City to enter into interest rate exchange agreements or "swaps", whether or not relating to variable-rate bonds, the Legislature would be confirming the utility of these agreements that it recognized when it created this swap authorization in Chapter 93 of the Laws of 2002.

Third, with respect to interest on variable rate bonds used in a refunding, by extending through July 15, 2010 the amendment made to section 90.10(b)(2)(a) of the LFL, the City would continue to be able to demonstrate present value savings by permitting the rate on variable rate bonds to be the fixed rate payable in a related interest rate exchange agreement or as found by the Finance Board. Furthermore, this would extend the City's ability to refund variable rate bonds with other variable rate bonds without reference to the present value savings test. The extension of these provisions and the enhanced flexibility in entering into exchange agreements are essential if the City is to efficiently access the public credit markets.

Accordingly, the Mayor urges the earliest possible favorable consider-

ation of this proposal by the Legislature.

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# STATE OF NEW YORK

8616

2009-2010 Regular Sessions

## IN ASSEMBLY

May 29, 2009

Introduced by M. of A. FARRELL, COOK, WRIGHT, BING, KELLNER, POWELL, ESPAILLAT -- Multi-Sponsored by -- M. of A. O'DONNELL -- read once and referred to the Committee on Ways and Means

AN ACT to amend the local finance law, in relation to the sale of bonds and notes of the city of New York, the refunding of bonds, the down payment for projects financed by bonds, variable rate debt, and interest rate exchange agreements of the city of New York; to amend the New York state financial emergency act for the city of New York, in relation to a pledge and agreement of the state; and to amend chapter 142 of the laws of 2004, amending the local finance law relating to interest rate exchange agreements of the city of New York and refunding bonds of such city, in relation to the effectiveness thereof

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

1 Section 1. The opening paragraph of paragraph (a) of section 54.10 of  
2 the local finance law, as amended by chapter 117 of the laws of 2008, is  
3 amended to read as follows:

4 To facilitate the marketing of any issue of bonds or notes of the city  
5 of New York issued on or before June thirtieth, two thousand [~~nine~~] ten,  
6 the mayor and comptroller of such city may, subject to the approval of  
7 the state comptroller and the limitations on private sales of bonds and  
8 notes, respectively, provided by law:

9 § 2. The opening paragraph of paragraph a of section 57.00 of the  
10 local finance law, as amended by chapter 117 of the laws of 2008, is  
11 amended to read as follows:

12 Bonds shall be sold only at public sale and in accordance with the  
13 procedure set forth in this section and sections 58.00 and 59.00 of this  
14 title, except as otherwise provided in this paragraph. Bonds may be sold  
15 at private sale to the United States government or any agency or instru-  
16 mentality thereof, the state of New York municipal bond bank agency, to  
17 any sinking fund or pension fund of the municipality, school district or

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[-] is old law to be omitted.

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1 district corporation selling such bonds, or, in the case of sales by the  
2 city of New York prior to July first, two thousand [~~nine~~] ten, also to  
3 the municipal assistance corporation for the city of New York or to any  
4 other purchaser with the consent of the mayor and the comptroller of  
5 such city and approval of the state comptroller, or, in the case of  
6 sales by the county of Nassau prior to December thirty-first, two thou-  
7 sand seven, also to the Nassau county interim finance authority with the  
8 approval of the state comptroller, or, in the case of sales by the city  
9 of Buffalo prior to June thirtieth, two thousand thirty-seven, also to  
10 the Buffalo fiscal stability authority with the approval of the state  
11 comptroller, or, in the case of bonds or other obligations of a munici-  
12 pality issued for the construction of any sewage treatment works, sewage  
13 collecting system, storm water collecting system, water management  
14 facility, air pollution control facility or solid waste disposal facili-  
15 ty, also to the New York state environmental facilities corporation, or,  
16 in the case of bonds or other obligations of a school district or a city  
17 acting on behalf of a city school district in a city having a population  
18 in excess of one hundred twenty-five thousand but less than one million  
19 inhabitants according to the latest federal census, issued to finance or  
20 refinance the cost of school district capital facilities or school  
21 district capital equipment, as defined in section sixteen hundred seven-  
22 ty-six of the public authorities law, also to the dormitory authority of  
23 the state of New York. Bonds of a river improvement or drainage district  
24 established by or under the supervision of the department of environ-  
25 mental conservation may be sold at private sale to the State of New York  
26 as investments for any funds of the state which by law may be invested,  
27 provided, however, that the rate of interest on any such bonds so sold  
28 shall be approved by the water power and control commission and the  
29 state comptroller. Bonds may also be sold at private sale as provided in  
30 section 63.00 of this title. No bonds shall be sold on option or on a  
31 deferred payment plan, except that options to purchase, effective for a  
32 period not exceeding one year, may be given:

33 § 3. Subdivision 3 of paragraph g of section 90.00 of the local  
34 finance law, as amended by chapter 117 of the laws of 2008, is amended  
35 to read as follows:

36 3. Outstanding bonds may, pursuant to a power to recall and redeem or  
37 with the consent of the holders thereof, be exchanged for refunding  
38 bonds (i) if the refunding bonds are to bear interest at a rate equal to  
39 or lower than that borne by the bonds to be refunded or (ii) if, in the  
40 case of the city of New York prior to July first, two thousand [~~nine~~]  
41 ten, the annual payment required for principal and interest on the  
42 refunding bond is less than the annual payment required for principal  
43 and interest on the bond to be refunded, in each case such annual  
44 payments to be determined by dividing the total principal and interest  
45 payments due over the remaining life of the bond by the number of years  
46 to maturity of the bond or (iii) if the bonds to be refunded were issued  
47 by the city of New York after June thirtieth, nineteen hundred seventy-  
48 eight and prior to July first, two thousand [~~nine~~] ten and contain  
49 covenants referring to the existence of the New York state financial  
50 control board for the city of New York or any other covenants relating  
51 to matters other than the prompt payment of principal and interest on  
52 the obligations when due and the refunding bond omits or modifies any  
53 such covenant.

54 § 4. Subdivision 8 of paragraph d of section 107.00 of the local  
55 finance law, as amended by chapter 117 of the laws of 2008, is amended  
56 to read as follows:

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1 8. Notwithstanding any other provision of law, the financing by the  
2 city of New York prior to July first, two thousand, ~~nine~~ ten of any  
3 object or purpose which has a period of probable usefulness determined  
4 by law by the issuance of any bonds or notes, including (i) the issuance  
5 of bonds or notes to obtain reimbursement for funds heretofore advanced  
6 for the object or purpose for which the bonds or notes are being issued,  
7 (ii) the issuance of bonds or notes to redeem notes previously issued  
8 for the object or purpose for which the bonds or notes are being issued  
9 or (iii) the issuance of bonds to refund bonds previously issued for the  
10 object or purpose for which bonds are being issued.

11 § 5. The closing paragraph of paragraph a of section 54.90 of the  
12 local finance law, as amended by chapter 117 of the laws of 2008, is  
13 amended to read as follows:

14 Notwithstanding the foregoing, whenever in the judgment of the finance  
15 board of the city of New York the interest of such city would be served  
16 thereby, the city of New York may without further approval issue bonds  
17 or notes, on or before July fifteenth, two thousand ~~nine~~ ten, with  
18 interest rates that vary in accordance with a formula or procedure and  
19 are subject to a maximum rate of interest set forth or referred to in  
20 the bonds or notes and may provide the holders thereof with such rights  
21 to require the city or other persons to purchase such bonds or notes or  
22 renewals thereof from the proceeds of the resale thereof or otherwise  
23 from time to time prior to the final maturity of such bonds or notes as  
24 the finance board of the city of New York may determine and the city may  
25 resell, at any time prior to final maturity, any such bonds or notes  
26 acquired as a result of the exercise of such rights; provided, however,  
27 that at no time shall the total principal amount of bonds and notes  
28 issued by the city of New York pursuant to this paragraph (other than  
29 bonds and notes (1) bearing interest at rates and for periods of time  
30 that are specified without reference to future events or contingencies,  
31 or (2) described in section 136.00 of this article) exceed twenty-five  
32 percent of the limit prescribed by section 104.00 of this article.

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34 54.90 of the local finance law, as amended by chapter 117 of the laws of  
35 2008, is amended to read as follows:

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37 comptroller of the city of New York may:

38 § 7. Subdivision 1 of section 10-a of section 2 of chapter 868 of the  
39 laws of 1975, constituting the New York state financial emergency act  
40 for the city of New York, as amended by chapter 117 of the laws of 2008,  
41 is amended to read as follows:

42 1. In the event that after the date on which the provisions of this  
43 act become operative, any notes or bonds are issued by the city prior to  
44 July 1, ~~2009~~ 2010, or any bonds are issued by a state financing agen-  
45 cy, the state of New York hereby authorizes the city and authorizes and  
46 requires such state financing agency to include a pledge and agreement  
47 of the state of New York in any agreement made by the city or such state  
48 financing agency with holders or guarantors of such notes or bonds that  
49 the state will not take any action which will (a) substantially impair  
50 the authority of the board during a control period, as defined in subdi-  
51 vision twelve of section two of this act as in effect on the date such  
52 notes or bonds are issued (i) to approve, disapprove, or modify any  
53 financial plan or financial plan modification, including the revenue  
54 projections (or any item thereof) contained therein, subject to the  
55 standards set forth in paragraphs a, c, d, e and f of subdivision one of  
56 section eight of this act as in effect on the date such notes or bonds

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1 are issued and paragraph b of such subdivision as in effect from time to  
2 time, (ii) to disapprove a contract of the city or a covered organiza-  
3 tion if the performance of such contract would be inconsistent with the  
4 financial plan or to approve or disapprove proposed short-term or long-  
5 term borrowing of the city or a covered organization or any agreement or  
6 other arrangement referred to in subdivision four of section seven of  
7 this act, or (iii) to establish and adopt procedures with respect to the  
8 deposit in and disbursement from the board fund of city revenues; (b)  
9 substantially impair the authority of the board to review financial  
10 plans, financial plan modifications, contracts of the city or the  
11 covered organizations and proposed short-term or long-term borrowings of  
12 the city and the covered organizations; (c) substantially impair the  
13 independent maintenance of a separate fund for the payment of debt  
14 service on bonds and notes of the city; (d) alter the composition of the  
15 board so that the majority of the voting members of the board are not  
16 officials of the state of New York elected in a state-wide election or  
17 appointees of the governor; (e) terminate the existence of the board  
18 prior to the time to be determined in accordance with section thirteen  
19 of this act as in effect on the date such notes or bonds are issued; (f)  
20 substantially modify the requirement that the city's financial state-  
21 ments be audited by a nationally recognized independent certified public  
22 accounting firm or consortium of firms and that a report on such audit  
23 be furnished to the board; or (g) alter the definition of a control  
24 period set forth in subdivision twelve of section two of this act, as in  
25 effect on the date such notes or bonds are issued, or substantially  
26 alter the authority of the board, as set forth in said subdivision to  
27 reimpose or terminate a control period; provided, however, that the  
28 foregoing pledge and agreement shall be of no further force and effect  
29 if at any time (i) there is on deposit in a separate trust account with  
30 a bank, trust company or other fiduciary sufficient moneys or direct  
31 obligations of the United States or obligations guaranteed by the United  
32 States, the principal of and/or interest on which will provide moneys to  
33 pay punctually when due at maturity or prior to maturity by redemption,  
34 in accordance with their terms, all principal of and interest on all  
35 outstanding notes and bonds of the city or such state financing agency  
36 containing this pledge and agreement and irrevocable instructions from  
37 the city or such state financing agency to such bank, trust company or  
38 other fiduciary for such payment of such principal and interest with  
39 such moneys shall have been given, or (ii) such notes and bonds, togeth-  
40 er with interest thereon, have been paid in full at maturity or have  
41 otherwise been refunded, redeemed, defeased, or discharged; and provided  
42 further that the foregoing pledge and agreement shall be of full force  
43 and effect upon its inclusion in any agreement made by the city or state  
44 financing agency with holders or guarantors of such notes or bonds.

45 Upon payment for such obligations issued pursuant to this act by the  
46 original and all subsequent holders inclusion of the foregoing covenant  
47 shall be deemed conclusive evidence of valuable consideration received  
48 by the state and city for such covenant and of reliance upon such pledge  
49 and agreement by any such holder. The state hereby grants any such bene-  
50 fited holder the right to sue the state in a court of competent juris-  
51 diction and enforce this covenant and agreement and waives all rights of  
52 defense based on sovereign immunity in such an action or suit.

53 § 8. Section 5 of chapter 142 of the laws of 2004, amending the local  
54 finance law relating to interest rate exchange agreements of the city of  
55 New York and refunding bonds of such city, as amended by chapter 117 of  
56 the laws of 2008, is amended to read as follows:

A. 8616

5

1 § 5. This act shall take effect immediately, provided, that section  
2 three of this act shall ~~expire~~ and be deemed repealed ~~on July 15, [2009]~~  
3 2010.

4 § 9. Separability. If any clause, sentence, paragraph, section or part  
5 of this act shall be adjudged by any court of competent jurisdiction to  
6 be invalid, such judgment shall not affect, impair or invalidate the  
7 remainder thereof, but shall be confined in its operation to the clause,  
8 sentence, paragraph, section or part thereof directly involved in the  
9 controversy in which such judgment shall have been rendered.

10 § 10. This act shall take effect immediately.

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**NEW YORK STATE ASSEMBLY**  
**MEMORANDUM IN SUPPORT OF LEGISLATION**  
**submitted in accordance with Assembly Rule III, Sec.1(f).**

BILL NUMBER: A8616

SPONSOR: Farrell (MS)

TITLE OF BILL: An act to amend the local finance law, in relation to the sale of bonds and notes of the city of New York, the refunding of bonds, the down payment for projects financed by bonds, variable rate debt, and interest rate exchange agreements of the city of New York; to amend the New York state financial emergency act for the city of New York, in relation to a pledge and agreement of the state; and to amend chapter 142 of the laws of 2004, amending the local finance law relating to interest rate exchange agreements of the city of New York and refunding bonds of such city, in relation to the effectiveness thereof

SUMMARY OF PROVISIONS:

Section one of this bill would amend § 54.10(a) of the Local Finance Law ("LFL") to extend until 2010 the provisions of such section authorizing the City to sell its obligations through negotiated agreement, to provide for compensation for services rendered in connection with the private sale of obligations by selling such obligations at a discount, to provide for redemption of its obligations prior to maturity at prices and pursuant to terms determined by the City, and to include the costs of a negotiated underwriting and other costs of issuance of its obligations in the cost of the object or purpose being financed by such obligations.

Section two would amend LFL § 57.00(a) to extend until 2010 the City's authority to sell bonds at private sale.

Section three would amend LFL § 90.00(g)(3) to extend until 2010 the City's authorization to exchange refunding bonds for outstanding bonds under certain circumstances.

Section four would amend LFL § 107.00(d)(8) to extend until 2010 the inapplicability of the down payment provisions of that section to certain bonds and notes of the City.

Section five of the bill would amend LFL § 54.90 (a) to extend through July 15, 2010 the authorization for the City to issue bonds or notes with variable rates of interest

Section six of the bill would amend LFL § 54.90(d)(1) to extend through July 15, 2010 the authorization for the City to enter into interest rate exchange agreements (commonly referred to as "swaps") or other similar agreements.

Section seven would amend § 10-a(1) of the New York State Financial Emergency Act for the City of New York ("FEA") to extend until 2010 the authority of the City to include the pledge and agreement of the State in agreements with holders or guarantors of City obligations.

Section eight would amend § 5 of Ch. 142 of the laws of 2004 to extend until 2010 the amendment to section 90.10(b)(2)(a) of the LFL providing that for purposes of calculating present value savings in a refund transaction, the interest payments on variable rate bonds may be the fixed rate payable by the City in a related interest rate exchange agreement, if any, or as found by the Finance Board of the City of New York ("Finance Board"); and in the case of refunding of variable rate bonds

with variable rate bonds, if determined by the Finance Board, present value savings would not need to be demonstrated.

**JUSTIFICATION:**

This bill includes several elements that will be instrumental in ensuring that the City of New York has efficient and cost-effective access to the capital markets, which have been experiencing unprecedented turmoil over the past year. First, in 1978, the Legislature enacted various provisions of the LFL and the FEA to respond to the financial emergency existing in the City and to improve marketability of City obligations by authorizing their sale on terms consistent with current market practices. Certain of these provisions contained sunset provisions, and in 1982, the Legislature extended certain sunset provisions and introduced other changes necessary for the continued successful marketing of City obligations, some of which were applicable to other municipal issuers as well. Since 1986, the Legislature has extended these sunset provisions annually.

This network of legislation has enabled the City to continue to sell its obligations in the public credit markets during these difficult times. Indeed, the size of the City's capital program and the current market environment, in which competitive sales of debt have, on occasion, failed to attract any bidders, makes the ability to sell debt through negotiated sales crucial to the City. If the City is to continue to undertake necessary capital projects, it is essential that it retain its ability to utilize modern financing techniques. The extension of these sunset provisions therefore is essential to the City's fiscal health, especially in light of the current economic downturn.

Second, by extending through July 15, 2010 the authorization of the City to enter into interest rate exchange agreements or "swaps", whether or not relating to variable-rate bonds, the Legislature would be confirming the utility of these agreements that it recognized when it created this swap authorization in Chapter 93 of the Laws of 2002.

Third, with respect to interest on variable rate bonds used in a refunding, by extending through July 15, 2010 the amendment made to section 90.10(b)(2)(a) of the LFL, the City would continue to be able to demonstrate present value savings by permitting the rate on variable rate bonds to be the fixed rate payable in a related interest rate exchange agreement or as found by the Finance Board. Furthermore, this would extend the City's ability to refund variable rate bonds with other variable rate bonds without reference to the present value savings test. The extension of these provisions and the enhanced flexibility in entering into exchange agreements are essential if the City is to efficiently access the public credit markets.

**FISCAL IMPLICATIONS:** To be determined

EFFECTIVE DATE: Immediately

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